This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 12, 1993.

J. Suzanne Hedgepeth,

*Chief, Exemptions Branch Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 93–11798 Filed 5–18–93; 8:45 am]

BILLING CODE 4910–60–M

## Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions or applications to become a party to an exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before June 3, 1993.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

| Application No. | Applicant | Renewal of Exemption |
|---|---|---|
| 3216–X | E.I. du Pont de Nemours & Company, Inc., Wilmington, DE (See Footnote 1) | 3216 |
| 9066–X | Inflation Systems, Inc., LaGrange, GA (See Footnote 2) | 9066 |
| 9781–X | Chlorine Institute, Inc., Washington, DC (See Footnote 3) | 9781 |
| 9977–X | Hercules Incorporated, Wilmington, DE (See Footnote 4) | 9977 |
| 10336–X | Morton International, Inc., Ogden, UT (See Footnote 5) | 10336 |
| 10916–X | Nalco Chemical Company, Naperville, IL (See Footnote 6) | 10916 |

[1] To modify exemption to provide for shipment of trifluoromethane, classed as Division 2.2 in DOT Specification 110A2000W tank car.
[2] To modify exemption to provide for shipment of scrap airbag inflators in DOT Specification 17H steel drums, classed as Division 4.1.
[3] To modify exemption to eliminate the requirement to hydrostatically retest non-DOT specification salvage cylinders every two years.
[4] To modify exemption to provide for an additional rocket motor transported in a propulsive state, with igniters installed Classed as Division 1.3.
[5] To modify exemption to provide for an increase of 30 pounds net weight per 3.5 gallon steel drum of propellant explosives transported as Division 1.3 material.
[6] To modify exemption to reduce height of required exemption markings on non-DOT 57 portable tanks.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 3667–P | Petro Source Partners, Ltd., Dumas, TX | 3667 |
| 4850–P | High Energy International, Fort Worth, TX | 4850 |
| 6309–P | Fomo Products, Inc., Norton, OH | 6309 |
| 6626–P | Holox, Ltd., Atlanta, GA | 6626 |
| 6691–P | CryoGas Corp., Syracuse, NY | 6691 |
| 7770–P | Produven Caracas, Venezuela | 7770 |
| 7891–P | Nite Lite Company, Clarksville, AR | 7891 |
| 8035–P | Young Wireline Service, Inc., Charleston, WV | 8035 |
| 8151–P | Ropak Corporation, Fullerton, CA | 8151 |
| 8273–P | Takata Moses Lake, Inc., Moses Lake, WA | 8273 |
| 8451–P | High Energy International Fort Worth, TX | 8451 |
| 8453–P | Kesco, Inc., Butler, PA | 8453 |
| 8554–P | Kesco, Inc., Butler, PA | 8554 |
| 8554–P | Explosives Supply, Inc., Ringwood, NJ | 8554 |
| 8554–P | Farmers Supply & Explosives, Inc., Barbourville, KY | 8554 |
| 8845–P | Young Wireline Service, Inc., Charleston, WV | 8845 |
| 8958–P | High Energy International, Fort Worth, TX | 8958 |
| 8988–P | High Energy International, Fort Worth, TX | 8988 |
| 9662–P | Young Wireline Service, Inc., Charleston, WV | 9262 |
| 9275–P | Erno Laszlo, Ltd., Roanoke, VA | 9275 |
| 9275–P | Noville Essential Oil Company, Inc., South Plainfield, NJ | 9275 |
| 9281–P | High Energy International, Forth Worth, TX | 9281 |
| 9694–P | Advance Chemical Distribution, Inc., Sand Springs, OK | 9694 |
| 9723–P | Environmental Transport Systems, Jamestown, ND | 9723 |
| 9769–P | Tri-State Environmental, Inc., Romulus, MI | 9769 |
| 10165–P | Arizona Department of Commerce, Phoenix, AZ | 10165 |

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 10247–P | G.C. Industries, Inc., Fremont, CA | 10247 |
| 10346–P | St. Joe Forest Products Company, Port St. Joe, FL | 10346 |
| 10695–P | AMSCO International, Inc., Erie, PA | 10695 |
| 10717–P | General Chemical Corporation, Parsippany, NJ | 10717 |
| 10795–P | Niagara Mohawk Power Corporation (NM), Syracuse, NY | 10795 |
| 10845–P | LCP Chemicals, Linden, NJ | 10845 |
| 10845–P | ASHTA Chemicals, Inc., Ashtabula, OH | 10845 |
| 10917–P | ABB Advanced Battery Systems, Inc., Mississauga, Ontario, CN | 10917 |
| 10917–P | Hughes Aircraft Company, Torrance, CA | 10917 |

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 12, 1993.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 93–11799 Filed 5–18–93; 8:45 am]

BILLING CODE 4910–60–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 95
Wednesday, May 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Wednesday, May 26, 1993.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**MATTERS TO BE CONSIDERED:**

*Wednesday, May 26*

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Randall C. Orem, D.O.—Commission Action on Settlement Agreement Approved in LBP-92-18 (Tentative)
(Contact: Steve Burns, 301-504-2184)

b. Sacramento Municipal Utility District's Motion for Reconsideration of CLI-93-03 (Rancho Seco) (Tentative)
(Contact: Margaret Doane, 301-504-2001)

2:00 p.m.

Briefing on Status of Efforts for Risk Harmonization (Public Meeting)
(Contact: Richard Bangart, 301-504-3340)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 504-1661.

Dated: May 14, 1993.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 93-11986 Filed 5-17-93 12:02 pm]

**BILLING CODE 7590-01-M**

# Corrections

Federal Register
Vol. 58, No. 95
Wednesday, May 19, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 93-010N]

### FSIS Proposed Strategic Plan; Public Hearings and Request for Comments

*Correction*

In notice document 93-11435 beginning on page 28389 in the issue of Thursday, May 13, 1993, make the following correction:

On page 28390, in the second column, in the table, in the third column (FSIS hearing contact), in the second entry, the phone number should read "(215) 597-4217."

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No. 920491-2339]

RIN 0693-AB01

### Approval of Federal Information Processing (FIPS) 151-2, Portable Operating System Interface (POSIX)—System Application Program Interface [C Language]

*Correction*

In notice document 93-11137 beginning on page 27995 in the issue of Wednesday, May 12, 1993, make the following corrections:

On page 27996, in the third column:

1. In paragraph f., in the second line from the bottom, "1013-" should read "1031-".

2. In paragraph h., in the second line from the bottom, "<unisted.h>" should read "<unistd.h>".

BILLING CODE 1505-01-D

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 509

[APD 2800.12A, CHGE 45]

### General Services Administration Acquisition Regulation; Administrative Records for Debarment and Suspension

*Correction*

In rule document 93-10689 beginning on page 26919 in the issue of Thursday, May 6, 1993, make the following correction:

509.407-3 [Corrected]

1. On page 26920, in the second column, in section 509.407-3(b)(7)(iii), in the fourth line, "of" should read "for".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1994

*Correction*

In notice document 93-7224 beginning on page 16685 in the issue of Tuesday, March 30, 1993, make the following corrections:

1. On page 16686, in the table, under Basic support, in the California entry, "5,532,464" should read "5,732,464", and in the West Virginia entry, "756,106" should read "756,016".

2. On the same page, in the same table, under Protection and advocacy, in the Wisconsin entry, "339,820" should read "399,820".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-943-4210-06; GP3-205; OR-48631]

### Proposed Withdrawal and Opportunity for Public Meeting; Oregon

*Correction*

In notice document 93-10180 beginning on page 26153 in the issue of Friday, April 30, 1993, on page 26154, in the 1st column, in land description T. 36 S., R. 2 W., in the 12th line from the end, "2.00 feet" should read "20.00 feet".

BILLING CODE 1505-01-D

federal register

Wednesday
May 19, 1993

Part II

# Department of Health and Human Services

## Administration on Aging

**Fiscal Year 1993 Program Announcement; Availability of Funds and Request for Applications; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

[(Program Announcement No. AOA–93–1)]

### Fiscal Year 1993 Program Announcement; Availability of Funds and Request for Applications

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building activities.

**SUMMARY:** The Administration on Aging (AoA) announces its Fiscal Year (FY) 1993 Discretionary Funds Program (DFP) of knowledge building, program innovation and development, information dissemination, training, technical assistance, and related capacity-building efforts. The FY 1993 DFP has a dual emphasis: (1) Developing and strengthening systems of home and community based long term care for older Americans who are at risk of losing their independence; and (2) responding to the mandates contained in the Amendments to the Older Americans Act of 1992, which concentrate discretionary funding resources on several aging program areas and on responding to the needs of vulnerable older population groups. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89–73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following Part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of the priority area project activities described herein.

**DATES:** This announcement has two deadlines for applications, depending upon the particular priority area under which the application is submitted for competitive review and funding. For the first set of priority areas, the deadline for applications is *July 19, 1993.* For the second set of priority areas, the application deadline is *September 10, 1993.*

**ADDRESSES:** Application receipt point: U.S. Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–93–1.

**FOR FURTHER INFORMATION CONTACT:** Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4278, Washington, DC 20201, telephone (202) 619–0441.

**SUPPLEMENTARY INFORMATION:**

## Part I—Background

### *A. Program Priorities of the Administration on Aging*

The size, the diversity, and the growth of our older population constitute the demographic realities of an aging society. Today, there are 43 million people over the age of 60; three million older persons are age 85 or older. By the year 2030, according to U.S. Bureau of the Census projections, 83 million people will be age 60 or over; eight million of these elders will be age 85 or older. Older women now outnumber older men by three to two. That ratio reaches five older women for every two older men among those 85 and over, a population which faces a serious risk not just of chronic illness and disability but of not having a caregiver at home to provide much needed assistance. The changing demographics of America's population are impacting every segment of our society. The public and private sectors at national, State, and local levels are influenced in important ways by the increasing numbers of older persons, their diversity, their resources, and their needs.

Much of the change taking place in our older population is positive. Today, many older people are healthier, better educated and more likely to live fuller, independent life styles than their counterparts of a generation or two ago. Older persons are a diverse resource, most continuing to make substantial contributions to their families, their communities, and their nation. A 1991 report found that more than 15.5 million older persons served as volunteers in communities nationwide. Older persons make up a great number of the volunteers we depend upon for assistance not only to other older persons, but to the intergenerational programs and community service programs that keep our communities viable.

Media presentations, public attention, and policy debates have not often focused on the diverse resources and contributions of the nation's elderly. Rather, they have given rise to widespread concern over future economic, political and social trends identified with the graying of America. That concern reaches beyond the dramatic increase in the numbers of older people today and is heightened by the prospect of the aging of the baby-boom generations in the early decades of the 21st century. The fact is, sizeable numbers of older persons, now and in the future, will depend upon us for assistance in the form of economic support, long term care, and social and supportive services. As a nation we face important decisions about the care of our vulnerable elderly, decisions of special relevance to those elderly who are frail and need long term care, to those who are poor, to older Americans who live in rural areas, and to members of minority groups.

Through this Program Announcement, the Administration on Aging is focusing Title IV Discretionary Funds support on program initiatives aimed at developing and strengthening systems of home and community based long term care for older Americans at risk. At the national level, long term care is a core issue in the current debate on health care reform. There is renewed emphasis on improving coordination of current Federal, State, and local programs. At the State and local levels, efforts have focused on developing more responsive and cost-effective systems of care, with a complementary emphasis on community based approaches. State and Area Agencies on Aging have been in the forefront in improving the access of older persons to a broad array of home and community services.

The second major area of emphasis in this Title IV Discretionary Funds Program Announcement derives from the Amendments to the Older Americans Act of 1992, which concentrate discretionary funding resources on making specific aging programs more effective and on better serving vulnerable population groups. The priority program areas include, in addition to long term care, housing, transportation, pension rights, elder abuse, multigenerational and intergenerational programs, and career

preparation for the field of aging. The vulnerable elderly groups include (besides the chronically impaired elderly) older persons living in rural areas, Native American Elders and other minority elderly, and older individuals with developmental disabilities.

*B. The AoA Discretionary Funds Program*

The Discretionary Funds Program authorized by Title IV of the Older Americans Act constitutes the major research, demonstration, training, and development effort of the Administration on Aging. The Title IV mandate is aimed, generally, at building knowledge, developing innovative model programs, and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary projects are focused on:

- Advancing our knowledge and understanding of current program and policy issues, such as community and in-home long term care service systems and programs, significant to the well-being of the older population;
- Improving the effectiveness of Older Americans Act programs by testing new models, systems, and approaches for better providing and delivering services to older persons; and
- Providing training, technical assistance, and information that will increase our ability to serve older Americans with skill, care, and compassion.

*C. Coordination With Other Federal Agencies*

Under the Older Americans Act, the Administration on Aging (AoA) functions as a focal point within the Federal Government for aging-related concerns. In that capacity, AoA advises the Secretary of Health and Human Services on matters affecting older Americans and provides consultation and information to units across the Federal Government on the characteristics, circumstances, and needs of older persons. AoA has a strong commitment to working with other Federal agencies on policy and program development in issue areas of importance to older Americans. To carry out its national level program and advocacy responsibilities, AoA places major emphasis on developing collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Federal Interagency Agreements to better serve older Americans, combining our resources with those of the Departments of Transportation, Housing and Urban Development, Labor, and Education, the Farmers Home Administration, and ACTION, as well as with other agencies within the Department of Health and Human Services, such as the Social Security Administration, the Health Care Financing Administration, the Administration for Children and Families, and the National Institute on Aging.

These interagency collaborations represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence. AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallel a number of the priority areas in this Discretionary Funds Program Announcement.

*D. Dissemination of Project Results and Products*

In keeping with the provisions of the Older Americans Act, all projects funded under Title IV are required to undertake vigorous steps to disseminate the results and products of their projects to appropriate audiences involved in promoting the well being of older persons. As described in Part III (section I.2) of this announcement, the most effective dissemination begins at the moment a project is conceptualized and includes involvement of potential user audiences throughout the project, particularly in the design of products. Applicants are also encouraged to consider the development, as appropriate, of short products suitable for widespread dissemination to older persons, their families and other caregivers, and practitioners who serve older persons. Advice on ways to maximize the utilization of a proposed project may be obtained by contacting Saadia Greenberg or Irma Tetzloff at the AoA Division of Dissemination and Utilization at (202) 619–0441. Applicants may also be interested in obtaining a publication entitled, *Dissemination by Design*, which may be requested by calling the above number.

*E. Technical Assistance Workshops for Prospective Applicants*

Workshops will be held in Washington, DC and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the workshop you are interested in attending.

| City | AoA contact person(s) |
|---|---|
| Washington, DC. | Alfred Duncker/Saadia Greenberg, Albert Byrd/Irma Tetzloff, (202) 619–0441. |
| Boston, Massachusetts. | Thomas Hooker, (617) 565–1158. |
| New York, New York. | Judith Rackmill, (212) 264–2976. |
| Philadelphia, Pennsylvania. | Paul E. Ertel, Jr., (215) 596–6891. |
| Atlanta, Georgia. | Franklin Nicholson, (404) 331–5900. |
| Chicago, Illinois. | Eli Lipschultz, (312) 353–3141. |
| Dallas, Texas. | John Diaz, (214) 767–2971. |
| Kansas City, Missouri. | Larry Brewster, (816) 374–6015. |
| Denver, Colorado. | Percy Devine, (303) 844–2951. |
| San Francisco, California. | Howard Williams, (415) 556–6003. |
| Seattle, Washington. | Chisato Kawabori, (206) 553–5341. |

*F. Statutory Authority*

The statutory authority for awards made under the AoA Discretionary Funds Program is contained in Title II and Title IV of the Older Americans Act, (42 U.S.C. 3001 et seq.), as amended by the Older American Act Amendments of 1992, Public Law 102–375, September 30, 1992.

*G. Public Comments on This Announcement*

AoA invites comments on this Discretionary Funds Program Announcement. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

**Part II—Priority Areas**

Part II of the Discretionary Funds Program (DFP) Announcement sets forth the priority areas under which applications will be considered for funding by the Administration on Aging. This part also provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions

regarding eligibility, costs, and duration may be found under the individual priority areas.

For the convenience of prospective applicants, a listing of the DFP priority areas is provided in two sections: Section A sets forth those priority areas which have a deadline for applications of *July 19, 1993*—applications that compete and are approved by AoA for funding under these priority areas will have start-up dates as early as September 1, 1993; and Section B sets forth those priority areas with an application deadline of *September 10, 1993*—applications that compete and are approved by AoA for funding under these priority areas will have start-up dates as early as December 1, 1993. Following the listing, each of the priority areas is described in detail.

Applications must be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

*A. Eligible Applicants*

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program Announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. Applications from individuals cannot be considered because they are ineligible to receive a grant award under the applicable provisions of Title II and Title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but they may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this program announcement that is not now a DHHS grantee should include, with its application, Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without proof of its status.

*B. Project Costs and Duration*

Under each priority area, AoA has estimated the number of projects to be funded and has provided guidelines regarding both the duration of those projects and the anticipated Federal share of project costs. Because applications are reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to the guidelines.

*C. Projects Funded Under Cooperative Agreement Awards*

Under certain priority areas, in particular those identified with the establishment of Resource Centers, the Administration on Aging (AoA) has indicated it will use the mechanism of the cooperative agreement in making awards. Under the cooperative agreement mechanism, AoA and each Center (or project) will share the responsibility for managing that Center/project.

The Center/project will have the primary responsibility for developing and implementing the activities of the Center. AoA will join with the Center in deciding the major issues to be addressed by the Center; use periodic briefings and ongoing consultation to share with the Center its knowledge of the issues being addressed by the Center as well as information about relevant activities being undertaken by others; provide feedback to the Center about the usefulness to the field of its written products and information sharing activities; and participate as much as possible in the deliberations of the Center advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed by both AoA and the prospective grantee prior to the issuance of the award.

*D. List of Priority Areas*

**Section A: Application Deadline: July 19, 1993**

*I. Home and Community Based Long Term Care for At-Risk Elderly*

1.1 National Resource Centers for Long Term Care
1.2 National Long Term Care Ombudsman Resource Center
1.3 Special Projects in Comprehensive Long Term Care

*II. More Effective Aging Programs and Better Services to Older Americans*

2.1 National Center on Elder Abuse
2.2 National Resource Centers for Older Indians, Alaska Natives, and Native Hawaiians
2.3 Training and Technical Assistance for Title VI Grantees
2.4 National Leadership Institute on Aging
2.5 Senior Transportation Demonstration Program Grants
2.6 Demonstration Program for Older Individuals With Developmental Disabilities
2.7 Demonstration Projects for Intergenerational and Multigenerational Activities
2.8 Rural Mental Health Care Training for Service Providers
2.9 Pension Information and Counseling Demonstration Program
2.10 Music Therapy, Art Therapy, and Dance-Movement Therapy Projects
2.10.1 Music/Art/Dance-Movement/Therapy Research and Demonstration Projects
2.10.2 Education, Training, and Information Dissemination Projects for Music/Art/Dance-Movement Therapists and the Aging Network
2.11 AoA Dissemination Projects

**Section B: Application Deadline: September 10, 1993**

*III. More Effective Aging Programs and Better Services to Older Americans*

3.1 Career Preparation, Education, and Training for the Field of Aging
3.1.1 Gerontology Training Programs in Institutions of Higher Education With High Minority Student Enrollment
3.1.2 Faculty and Curriculum Program Development in Gerontology
3.1.3 Gerontology Training Program Development in Two-Year Academic Institutions
3.1.4 Research and Technology: Innovation in Gerontological Education and Training
3.2 Supportive Services in Federally Assisted Housing Demonstration Projects
3.3 Housing Demonstration Program
3.3.1 Housing Ombudsman Demonstration Program
3.3.2 Foreclosure and Eviction Assistance and Relief Services Demonstration Program
3.4 Statewide Legal Hotlines for Older Americans
3.5 Minority Management Training Program Projects

**Priority Area Descriptions**

*Section A: Application Deadline: July 19, 1993*

I. Home and Community Based Long Term Care for At-Risk Elderly

*1.1 National Resource Centers for Long Term Care*

Pursuant to Section 407 of the Older Americans Act Amendments of 1992—Special Projects in Comprehensive Long Term Care, the Administration on Aging (AoA) is soliciting applications to establish and operate National Resource Centers for Long Term Care. The Centers will be responsible for conducting research, disseminating information, and providing training and technical assistance aimed at improving national, State, and local programs for the provision of home and community based long term care. The organizational and operational framework proposed for the new National Resource Centers for Long Term Care should reflect the applicant's awareness and understanding of the experience and accomplishments of earlier Long Term Care Centers and Institutes that have been supported by AoA.

During the past decade, States and localities have begun to completely restructure their long term care

programs and services. As the focus of care has shifted away from institutional settings, State and Area Agencies on Aging are taking the initiative to develop and expand community based systems for long term care. The goal of these coordinated delivery systems is to improve older and disabled persons' access to a broad array of individualized community services so that they can maintain their independence and remain in their homes and communities as long as possible.

AoA is interested in supporting Long Term Care National Resource Centers to assist in the development and expansion of effective home and community based long term care systems in this country. Within this systems development mission, each applicant shall propose to concentrate on one or more specialty area(s). In selecting subject area specialties, the applicant should consider those listed in Section 407 of the 1992 Older Americans Act Amendments, as well as others included in the following listing:

- Development of an infrastructure for community based long term care systems;
- Client assessment and case management;
- Data collection and analysis;
- Alzheimer's disease and related dementias and other cognitive impairments;
- Home modification and supportive services to enable older individuals to remain in their homes;
- Consolidation and coordination of services;
- Linkages between acute care, rehabilitative services, and long-term care facilities and providers;
- Decision making and bioethics;
- Supply, training and quality of long term care personnel, including those who provide rehabilitative services;
- Rural issues, including barriers to access services;
- Chronic mental illness; and
- Populations with greatest social need and/or populations with greatest economic need, with particular attention to low-income minorities.

All Centers must undertake the following activities on a national scope:

1. Training and technical assistance within their specialty area(s) to help agencies in the Aging Network, and other organizations and agencies working in the field of long term care, on policy and practice issues through such means as phone consultation, written products and materials, teleconferencing, workshops, and conference presentations;

2. Information dissemination that will result in effective sharing of the latest thinking, methods and findings with State Agencies on Aging, Area Agencies on Aging, service providers, researchers, educators, and the public; and

3. Research and development oriented toward results and products which have practical application and immediate use to those working in long term care, e.g., an analysis of key issues of concern relative to a particular long term care subject; the development and/or modeling of a useful instrument or tool; preparation of educational, practice, and technical assistance materials.

Each National Resource Center must undertake all three of these activities as they relate to its specialty area(s). Center awards are not intended for the support of basic research projects or professional academic training.

Any public or nonprofit agency, organization or institution is eligible to apply under this priority area. However, in order to merit serious consideration for a Resource Center award, an applicant must demonstrate that it has (1) extensive knowledge and experience in the proposed specialty area(s); (2) a record of relevant achievement in the proposed specialty area(s); and (3) the requisite organizational capability to carry out the activities of a Resource Center on a nationwide scale. Each Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position.

Organizations and institutions which now receive funding by AoA under National Eldercare Institute on Long Term Care grants are eligible to apply. However, AoA will not provide funding to the same organization or institution for similar efforts. Therefore, should they be successful in this National Resource Centers for Long Term Care competition, that grant award will replace any further funding support for that organization/institution under a National Eldercare Institute on Long Term Care grant.

AoA intends to fund approximately four (4) National Resource Centers on Long Term Care through Cooperative Agreement awards for an estimated project period of four (4) years. Because of the particular difficulties in providing long term care in rural areas, one new Resource Center will be devoted to long term care issues affecting the rural elderly. The Federal share of Center project costs is expected to range from $350,000 to $400,000 per year, depending on the scale of the effort proposed by the applicant and approved by AoA.

Applications for continuation funding of the Center beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government. Applicants must indicate their understanding of the financial limits of support as well as how they will seek alternative sources of support during and beyond the four year project period.

*1.2 National Long Term Care Ombudsman Resource Center*

In response to the legislative mandate set forth in Section 202(b)(2) of the 1992 Amendments, which amends the Older Americans Act by adding Section 202(a)(21), AoA is soliciting applications under this priority area to establish a National Long Term Care Ombudsman Resource Center. The overall purpose of the Center is to act as a resource for policy analysis on, and the more effective organization and operation of, Federal, State, and local long term care ombudsman programs. Specific functions of the Center, pertaining to research and analysis, training, technical assistance, information dissemination, and the establishment of a national ombudsman volunteer recruitment effort, are prescribed by the 1992 Amendments and discussed further in this priority area.

The Long Term Care Ombudsman program reflects a concern about the quality of life and care of older persons in long term care facilities. Residential long term care facilities or nursing homes, and board and care homes, provide care to the most chronically ill, to the most physically and mentally impaired elderly, and to those least likely to advocate on their own behalf. The nationwide network of fifty-two State ombudsman programs involves more than 1,000 paid staff and 9,000 volunteers who serve 2 million residents of long term care facilities. In Fiscal Year 1991, nationwide, State Ombudsman programs handled 174,284 complaints (76% in nursing homes, 17% in board and care homes).

Each State Long Term Care Ombudsman program is responsible for the investigation and resolution of complaints made by, or on behalf of, residents in long term care facilities, including board and care facilities. Complaints relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees).

The changing scope and greater responsibilities of the State Long Term Care Ombudsman programs were recognized by the Congress in its establishment of a new State Long Term Care Ombudsman Program under Title VII of the Older Americans Act. The Center will provide knowledge building, training, technical assistance, and other resources to State Long Term Care Program agencies based on a full understanding of Title VII and the challenges facing AoA and the network of State and Local Ombudsman programs in serving vulnerable older persons.

Ombudsman programs are also responsible for analyzing and monitoring the development and implementation of Federal, State, and local laws, regulations, and policies which affect long term care residents and for providing recommendations for resolving issues related to the care of older persons in long term care facilities. The ongoing concern about the quality of life and the quality of care of older persons in long term care facilities is reflected in the emphasis of the new Title VII of the Older Americans Act on the protection of the rights of vulnerable elderly. The Center is expected to address issues related to the protection of elder rights as set forth in Title VII of the Older Americans Act, with particular attention to the operation of Ombudsman programs, such as elder abuse, neglect, exploitation, and legal services.

Several national events and developments have called attention to the problem of elder abuse in institutional settings, including Congressional hearings and reports, and activities undertaken by the Department of Health and Human Services (DHHS). In 1985, the U.S. House Select Committee on Aging, exploring the victimization of institutionalized elderly and using state ombudsman estimates, issued a report that indicated perhaps 15% of residents may be physically abused, 40% psychologically abused, 35% medically neglected and many more denied basic rights, such as privacy (45%) and freedom of movement (25%). In 1990, the DHHS Office of the Inspector General released a report entitled "Resident Abuse in Nursing Homes." According to the report:

(1) There is widespread abuse in nursing homes;

(2) Reporting systems for abuse complaints involving nursing home residents are inadequate, and;

(3) State and Federal activities to prevent abuse of nursing home residents need strengthening.

In order to carry out their many responsibilities, Ombudsman programs must recruit, train, and retain both skilled professional staff and dedicated volunteers. The Center is expected to support the development and effective operation of Long Term Care Ombudsman programs across the nation and within each State through performing information dissemination, training, technical assistance, analysis, and short term research.

The Center should address a full range of subjects related to the operation of State and local Long Term Care Ombudsman programs. Such subjects may include, but are not limited to:

- Trends of State program development;
- Systems changes needed to improve State programs;
- Program management and reporting issues;
- Coordination of State and/or local service systems, ombudsman, aging services, adult protective services, legal services, licensure and certification agencies, Medicaid fraud investigation units, law enforcement, and health and welfare agencies.
- Linkages between the Ombudsman program and programs administered by the Health Care Financing Administrations, including the ombudsman role in the survey process;
- Roles and activities of ombudsman programs in addressing institutional abuse, such as improvement of State and community programs to prevent, identify, report, and resolve elder abuse cases through coordinated ombudsman, protective, social, medical, legal, and enforcement services;
- Best practices related to frequent and regular community involvement with long term care facilities;
- Public awareness of the rights and protections for institutional residents provided by federal legislation and the role of long term care ombudsman;
- State training programs to increase the professional expertise of ombudsman personnel;
- Best practices designed to recruit, train, and sustain (a) qualified personnel, and (b) volunteer ombudsman programs;
- Analysis of correlates/causes of elder abuse in institutional settings such as staff capabilities, physical and financial resources, the presence or lack of a family/informal support network for the resident, the integration of the nursing home with the community, and the institution's record of compliance with regulatory standards;
- Identification and analysis of Federal legislation and regulations which impact on the role and function of Ombudsman programs.

Public and private nonprofit organizations, institutions and agencies are eligible to apply under this priority area. Center applicants must demonstrate a strong knowledge base related to the program issues covered by the Amendments to the Older Americans Act of 1992, Title VII, that impact on the operation of Ombudsman programs. Applicants should demonstrate nationwide experience in working with national, State, and local organizations actively involved in long term care ombudsman program issues. The Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position.

Organizations and institutions which now receive funding by AoA under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant are eligible to apply. However, AoA will not provide funding to the same organization or institution for similar efforts. Therefore, should they be successful in this National Long Term Care Ombudsman Resource Center competition, that grant award will replace any further funding support for that organization/institution under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant.

AoA intends to fund the National Long Term Care Ombudsman Resource Center through a Cooperative Agreement award for an estimated project period of four (4) years. The Federal share of project costs is expected to range from $400,000 to $500,000 per year depending upon the scale of the effort proposed by the applicant and approved by AoA.

Applications for continuation funding of the Center beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government.

*1.3 Special Projects in Comprehensive Long Term Care*

Consistent with Section 407—Special Projects in Comprehensive Long Term Care, as enacted by the Older Americans Act Amendments of 1992, the Administration on Aging (AoA) is soliciting applications for demonstration projects to improve the delivery of long term care to the at-risk elderly. The findings, results, and

products of these projects are expected to advance significantly our capacity to develop and implement comprehensive systems of home and community based long term care.

It is well documented that at-risk older persons prefer to remain in their homes and communities rather than be institutionalized. In recent years, States and localities have been in the forefront of efforts to expand home and community based services, financing them through a mix of resources, including State general revenues, Medicaid State plan services, Medicaid Home and Community Based Waivers, Social Service Block Grants, Older Americans Act funds, and local governmental monies. While these efforts are significant in terms of enhancing the delivery of home and community services to older persons, many problems still exist with the current systems of care at the State and local levels.

The purpose of this priority area is to demonstrate State and local approaches that improve or build upon established systems of home and community based care or assist in the development of new systems. The expected outcomes are tested methodologies that State Agencies on Aging, Area Agencies on Aging, and others may use to improve home and community based systems for older persons. As required by Section 407, applications shall contain:

A. Information describing the problems in the delivery of long term care services in the State or local area to be served, including:

- Duplication of functions at the State and local levels in the delivery of long term care;
- Fragmentation of long term care systems, especially in coordinating services for populations of older individuals and other populations;
- Barriers to access for populations with greatest social need and populations with greatest economic need, including minorities and residents of rural areas;
- Lack of financing for long term care services;
- Lack of availability of adequately trained personnel to provide such services; and
- Lack of chronic care services (including rehabilitation services) that promote restoration, maintenance, or improvement of function in older individuals.

B. A plan to address the problems described.

C. Information describing the methods to be used in coordinating the proposed project with appropriate State Agencies on Aging, Area Agencies on Aging, and service providers.

In addition, applications should be based on knowledge of (1) existing State and local programs and (2) results of pertinent AoA and other agency supported research and demonstration projects. Applications should plan on utilizing successfully tested policies, programs, procedures and materials. Applications also should contain an evaluation component that effectively measures project outcomes and a dissemination effort to ensure that project results will be distributed to State Agencies on Aging, Area Agencies on Aging, and other relevant public and private agencies and organizations.

Eligible organizations include State Agencies on Aging and, in consultation with State Agencies on Aging, Area Agencies on Aging, institutions of higher education, and other public agencies and nonprofit private organizations. In awarding funds under this priority area, the Assistant Secretary for Aging will give preference to entities that demonstrate:

(1) Adequate State standards have been developed to ensure the quality of services proposed; and

(2) A commitment to carry out programs with State agencies responsible for the administration of titles XIX and XX of the Social Security Act.

It is expected that approximately ten (10) projects will be funded under this priority area with a project period of up to two (2) years and an approximate Federal share of $100,000 per project, per year. Title IV awards may not be used to pay for direct services that are eligible for reimbursement under Titles XVIII, XIX, or XX of the Social Security Act.

*Section A: Application Deadline: July 19, 1993*

II. More Effective Aging Programs and Better Served Older Americans

*2.1 National Center on Elder Abuse*

In response to the legislative mandate of the Amendments to the Older Americans Act of 1992, Section 202(d)(1), AoA solicits applications to establish a National Center on Elder Abuse. The functions of the Center, as specified by the Amendments and described in more detail below, include research, dissemination of research results and training materials, an information clearinghouse, and technical assistance.

Evidence from several quarters suggests that the number of older persons who are abused, exploited, and neglected is cause for public concern. The Subcommittee on Health and Long Term Care of the U.S. House of Representatives Select Committee on Aging estimated that, in 1989, approximately 1.5 million older Americans were victims of abuse in their own homes—an increase of 50% since 1980. The National Aging Resource Center on Elder Abuse stated that the number of reported cases is steadily increasing and estimated that in Fiscal Year 1991, 1.57 million elders were maltreated by others or were self-neglecting.

The recently enacted Title VII of the Older Americans Act, with its focus on elder rights, elder abuse, and ombudsman activities, calls attention to the problem of elder abuse, neglect, and exploitation at home and in institutional settings and stresses the need to take coordinated action on behalf of those elderly who are least able to advocate for themselves.

The Center will be responsible for carrying out the following activities:

(A) Perform clearinghouse functions by providing information about best practices in the organization, planning, and delivery of services by all levels of government and by the private sector to combat elder abuse;

(B) Compile, publish, and disseminate training materials for personnel working in the field; prepare and disseminate, periodically, a synthesis of recent research on elder abuse, neglect, and exploitation;

(C) Provide training and technical assistance to State agencies and other public and nonprofit agencies to assist them in planning, improving, developing, and carrying out programs and activities to combat elder abuse, neglect, and exploitation; and

(D) Conduct research and demonstration projects regarding elder abuse, neglect, and exploitation, with an emphasis on causes, prevention, identification, and treatment.

The Center is expected to address a full range of subjects related to the operation of State and local elder abuse prevention and intervention services. Such subjects may include, but are not limited to:

- Increased public awareness of elder abuse and increased willingness of those affected to seek help and outside intervention;
- Education of key professionals outside the aging and adult protective services network, for example, physicians;
- Coordination of services provided by Area Agencies on Aging with services instituted under State and local adult protection service programs;

- State and community programs to prevent, identify, report, and resolve elder abuse cases through coordinated protective, aging, social, health, medicaid fraud control, consumer protection, victim assistance, legal, and law enforcement services;
- Model approaches to improve Statewide programs and systems to prevent elder abuse, neglect, and exploitation;
- Improvement of State elder abuse information systems;
- Ethical issues related to provision of elder abuse prevention and intervention services;
- Collaboration with initiatives undertaken by Federal agencies participating in the Department of Health and Human Services Elder Abuse Task Force;
- Studies of the potential of various types of interventions for reducing the risk of elder abuse, neglect, and exploitation;
- Studies of the characteristics of elder abuse victims and perpetrators according to the type of abuse and outcomes of investigations; and
- Analyses of Federal and State program policies, legislation, legislative trends, regulations, and their impacts related to State and local elder abuse programs;

Public and private nonprofit organizations, institutions and agencies are eligible to apply under this priority area. Center applicants must demonstrate a strong knowledge base related to the program issues covered by the Amendments to the Older Americans Act of 1992, Title VII, that impact on elder abuse prevention and intervention programs. Applicants should also demonstrate nationwide experience and capacity for enhancing the coordination of State and local aging and adult protective services and in working with other national, State, and local organizations active in elder abuse prevention and intervention efforts. The Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position.

Organizations and institutions which now receive funding from AoA under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant are eligible to apply. However, AoA will not provide funding to the same organization or institution for similar efforts. Therefore, should they be successful in this National Center on Elder Abuse competition, that grant award will replace any further funding support for that organization/institution under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant.

AoA intends to fund the National Center on Elder Abuse through a Cooperative Agreement award for an estimated project period of four (4) years. The Federal share of the Center project costs is expected to range from $300,000 to $350,000 per year depending upon the scale of the effort proposed by the applicant and approved by AoA.

Applications for continuation funding of the Center beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government. Applicants must indicate their understanding of the financial limits of support as well as how they will seek alternative sources of support during and beyond the four year project period.

*2.2 National Resource Centers for Older Indians, Alaskan Natives, and Native Hawaiians*

Today, longevity is becoming more prevalent in Indian, Alaskan Native and Native Hawaiian communities. This welcome trend has placed greater demands on a service delivery system which is even more complex and fragmented than systems in non-Indian communities. In recognition of this, under the Older Americans Act Amendments of 1992, Congress has mandated the support of at least two (2) Resource Centers that will focus on issues and concerns affecting older Indians, Alaskan Natives and Native Hawaiians.

Applicants must specify at least two areas of primary concern on which the Center will focus. These areas shall be: health problems; long term care, including in-home care; access to services/transportation; elder abuse; community resources; and cultural promotion. Each Center is expected to develop a number of special activities within its areas of primary concern which will address the special needs of different Indian communities, namely, those of Federally recognized tribes, of State recognized tribes, Alaskan Natives, Native Hawaiians and of Indian Urban Organizations.

Applicants *must* include all of the following activities for each primary area included in their scope of work:

(1) *The development and provision of training and technical assistance;*

(2) *Short term applied research;*

(3) *Education of professionals and paraprofessionals;* and

(4) *Effective dissemination of reports and materials developed or obtained by the Center.*

1. *Training and technical assistance (T&TA):* The primary focus of T&TA by the Resource center is to increase the capabilities and performance of practitioners, planners and policy makers in order to expand services for older Native Americans and their families. Efforts in support of T&TA would include, but not be limited to seminars, workshops, conferences, printed materials, videos, on-site consultation, public presentations and forums. T&TA is for Title VI grantees, Tribal Organizations recognized by the State, urban Indian Organizations, practitioners, planners and policy makers. Where applicable, selected small projects can be designed for Federal, State or local agencies with the goal to enhance planning, implementation and delivery of services to older Native Americans.

2. *Applied Research:* Research is to be limited to short term studies with practical, useful products that develop, enhance or promote knowledge of and solutions to issues that impact on older Native Americans, including access, delivery, utilization, and consequences of existing health and supportive services programs.

3. *Education:* The educational focus of the Resource Center will be to initiate, expand or support educational programs for professionals and paraprofessionals in the health and social service fields, as well as other disciplines related to the development and/or provision of services for older Native Americans.

4. *Dissemination:* Each Resource Center must undertake specific initiatives that will result in effectively sharing knowledge, concepts and methodologies with professionals engaged in delivering services to older Native Americans, as well as with educators, public agencies such as Tribal organizations, State and Area Agencies on Aging, researchers and the public at large.

Substantial organizational commitment, made by the highest levels of the organization, must be clearly evident in the application. Each Center must have its own organizational identity within the awardee organization. Evidence must be provided that the Center will have the ability to function in an independent manner within the institution. Each Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position. Individuals qualified by

education, training and experience to accomplish the Center's activities shall be appointed to the faculty of each Center.

AoA and the Centers will work cooperatively in the development of Center agendas and awarding of subcontracts. AoA will work with the Centers to develop a system to set priorities for research; for training and technical assistance (and to assure that requests for assistance for a specific tribe are channeled through the appropriate Tribal organization); for education; and for dissemination. Whenever possible, AoA will share with the Centers information about other Federally supported projects and Federal activities relevant to its areas of primary concern.

Eligible applicants for Resource Center awards are institutions of higher education with experience in conducting research and assessment on the needs of older individuals. The Assistant Secretary for Aging will give preference to those institutions of higher education that provide evidence of relevant expertise and experience in conducting research on, and assessment of, the characteristics and needs of individuals who are older Native Americans.

It is expected that two (2) to four (4) Resource Centers projects will be funded by AoA under Cooperative Agreement awards for project periods of up to four (4) years. The Federal share of each Resource Center's project costs for the first year will be approximately $250,000; thereafter, funding for the subsequent budget periods will be approximately $300,000, $350,000 and $300,000, respectively, provided funds are available.

Applications for continuation grants of these Centers beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government. Applicants must indicate their understanding of the financial limits of support as well as how they will seek alternative sources of support during and beyond the four year project period.

*2.3 Training and Technical Assistance for Title VI Grantees*

AoA is interested in applications for a training and technical assistance project that, consistent with Section 411(a)(4) of the Older Americans Act, will further develop and strengthen the capacity of Title VI program directors and staff to provide comprehensive and coordinated systems of nutritional and supportive services for individuals who are older American Indians, Alaskan Natives and Native Hawaiians. Of particular interest are coordination of resources under Title VI and Title III of the Older Americans Act and strengthening Title VI program accountability.

Applications are solicited from public, voluntary or nonprofit organizations that are familiar with Older Americans Act programs and are knowledgeable about Title VI programs. The applicant selected to receive an award must be qualified to provide high quality training and technical assistance specifically adapted to the needs of the diversity of Title VI programs throughout the country.

The application should include:

(a) A plan for assessing training and technical assistance needs;

(b) A plan for both individual and group training and technical assistance;

(c) A plan for a national meeting, annually, to train directors of programs under Title VI;

(d) A discussion of how training and technical assistance will be coordinated with the AoA Regional Offices to assure training needs identified by Regional staff through their grants monitoring activities are addressed; and

(e) An evaluation plan to measure the results of the training and technical assistance provided, including process, outcome and impact measurements.

The training and technical assistance to be conducted under this project will include, but not be limited to the following areas:

- Effective provision of nutritional and supportive services;
- Data gathering, maintenance of records and report preparation;
- Effective use and coordination of resources under Title VI and Title III, including case management for targeting persons most in need;
- Effective integration of training with the AoA National Eldercare Institutes especially in the areas of nutrition, health promotion, health care and long term care; and
- Provision of training to new Title VI program directors.

The project shall have a Project Director with an appropriate background who shall devote at least 50% of her/his time to this effort. Appropriately qualified individuals shall be appointed to the project staff for purposes of providing the training and technical assistance effort described above.

Under the cooperative agreement award mechanism, AoA and the successful applicant will share the responsibility for managing the training and technical assistance program. The successful applicant will have the primary responsibility for developing and implementing the training and technical assistance activities. AoA will jointly participate with the successful applicant in such activities as clarifying issues for the national training meeting agenda, establishing priorities for training and technical assistance, coordinating with the AoA Regional Offices, and developing appropriate evaluation measures. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

AoA expects to fund one project under this priority area, with a Federal share of approximately $400,000 per year, and a project duration of approximately three (3) years.

*2.4 National Leadership Institute on Aging*

Since passage of the Older Americans Act in 1965, the aging network of State and Area Agencies on Aging, Tribal Organizations, and Older Americans Act Program Service Providers has matured and become an indispensable resource for older Americans in communities across this country. Until recent years, efforts have focused on building the aging network, resolving service delivery and development issues, and expanding the management capabilities of aging network executives.

By the mid 1980s, it became apparent that this nation was facing an era of fiscal conservatism at a time when both the population of older Americans and the intricacy of their needs were increasing. The impact of rapid and complex technological, social, economic and demographic changes and their implications for the future became very clear. The challenges demanded that executives and others in the field of aging adjust their vision of the issues and expand their role as innovators in behalf of older persons, their caregivers and families. In 1988, under the authority of Section 411(a) and Section 411(b)(2) of the Older Americans Act, the Administration on Aging (AoA) established the National Leadership Institute on Aging (NLIA) to provide a forum in which aging network executives could rethink issues and enhance their role as leaders in this era of change.

The NLIA, now in its fifth and final year of funding by AoA, has provided a highly successful residential leadership development program to aging network executives in the public, private and non-profit communities. The program

creates an environment where participants are encouraged to think innovatively about the challenges of an aging America, to engage in strategic planning focused at the community level, and to act collaboratively with other public and private institutions to meet the needs of older persons. To date, the National Leadership Institute on Aging has trained several hundred aging network executives through more than a dozen residential programs. The NLIA also offers extensive consultation and technical assistance to agencies and communities. Surveys indicate that the program has been well received by participants and their organizations.

There continues to be a need to stimulate the thinking and creativity of leaders on such issues as public-private partnerships; coalition building; community based long term care; managed care; urban, suburban and rural concerns; health care and many others. AoA intends to continue support, through a new cooperative agreement award, for a National Leadership Institute on Aging and is soliciting applications from organizations that have demonstrated the professional and administrative capacity to conduct such a program. AoA's goal is to assure availability of a program that is current with new trends and techniques in leadership development, strategic planning, community action and administration.

The proposed NLIA curriculum shall concentrate on leadership development concepts and skills in the context of aging issues. The program should not duplicate skills training such as fiscal management and supervision, topical reviews on subjects such as nutrition or day care, and other training which is the normal responsibility of State, Tribal, or local organizations. Applicants should identify and describe the course curriculum and show how the courses will meet the needs of participants. The curriculum should take into account such items as emerging trends for higher productivity, greater responsiveness to the customer, quality services and decentralized decision making.

The applicant should adapt the current state of knowledge regarding the effective organization and best practices of all relevant residential programs to the particular background experience, capabilities, and interests of the executives from a select group of organizations and agencies (as outlined below) who will be participating in the NLIA residential program. Possible sites for the residential program should be discussed and the environment selected should be conducive to workshops, independent study and informal sessions (beyond the classroom and conference area) in the evenings and over a weekend period. While the residential training represents the core of the program, applicants may wish to propose additional training formats to reach audiences that may not have the opportunity to attend a residential program.

In the past, participation in the training program has focused primarily on executives, top managers, and key mid-level staff of State and Area Agencies on Aging and Tribal Organizations. Limited numbers of participants came from other organizations such as universities, foundations, non-profit entities and others. Although members of the aging network should continue to be the primary audience for the program, *special efforts should be made to publicize the program and recruit top level or key representatives from those organizations outside the traditional aging network which have given aging issues a prominent place in their planning and action agenda.* Such organizations include, but are not limited to, business, church organizations, professional and trade associations, labor unions, national non-profit organizations and their affiliates, foundations and civic groups. All participants must be nominated by the organizations with which they are affiliated.

The National Leadership Institute on Aging must have its own strong organizational identity within the structure of the host organization. Evidence must be provided that the Institute will have the ability to function in a reasonably independent manner. An Advisory Committee shall be established to insure that the Institute is responsive to the needs of the program participants and is technically sound. It must be comprised of representatives of the aging network, other leaders and experts in the field of aging, and experts in field of leadership development.

The Institute shall have a Director with an appropriate background and experience who shall devote at least 50% of her/his time to this effort. Faculty will include resident core staff with expertise in one or several of the curriculum topics. The core faculty may be supplemented by visiting faculty who are expert in pertinent topical areas.

AoA intends to fund the National Leadership Institute on Aging through a Cooperative Agreement award for an estimated project period of five (5) years. The Federal share of the Center project costs is expected to approximate $400,000 in the first year and $500,000 in subsequent years. Each participant (or their employer) will be expected to contribute a minimum of $400 toward the cost of training. Provision will be made for scholarships to support participation by organizations that demonstrate an inability to pay the minimum cost. The applicant shall set forth a plan for garnering other sources of financial support such as partnership arrangements, foundation or endowment support or other appropriate assistance.

*2.5 Senior Transportation Demonstration Program Grants*

The Amendments to the Older Americans Act of 1992 include several provisions which recognize the transportation and access barriers faced by older persons, especially those elderly whose lack of transportation services place them at serious risk of losing their independence, including rural, low income, and minority older persons. In particular, the Amendments direct the Administration on Aging to carry out a Senior Transportation Demonstration Program. After a background discussion of the issues affecting transportation services for older persons, the specifics of the demonstration projects mandated by the 1992 Amendments are outlined by this priority area.

Transportation is often the key factor to determining whether an older person can live independently. It is vital that there be an effective and affordable system of transportation services available to the at-risk elderly population if they are to avail themselves of community-based services. The National Research Council's Transportation Research Board in a recent report summed up the matter by simply stating "mobility is essential to the quality of life for older people." Yet, we have not fully grasped the fact that the control of one's life, the maintenance of adequate housing and living arrangements, the use of financial, medical and social services, these purposes can not be realized by older persons, especially those at risk, if they do not have ready access to transportation services.

The automobile remains the principal mode of transportation for the Nation's citizens, including its senior citizens. More than 80 percent of trips made by persons over the age of 65 are made in automobiles, either as drivers or passengers, and that percentage is increasing. In 1965, only 40 percent of those age 65 or older had drivers licenses, as compared to 65 percent in 1985. More than 90 percent of those who will be age 65 in the year 2020

have a driver's license today. Thus, the planning and consideration of senior transportation programs must take into account that the great majority of older persons have and will continue to meet their transportation needs through the use of private automobiles, if not their own cars, then those of a relative, a friend, or a neighbor.

The needs of older drivers are of serious concern to all of us. As they age, older drivers gradually experience the loss of physical or financial ability to drive and to maintain an automobile. Neither vehicles nor roads were designed for those over age 65. Roadway design and sign standards need to be changed to respond to visual and other limitations often experienced by older drivers. When older persons—and the non-drivers who depend upon them—lose the ability to drive, they not only suffer drastic decreases in mobility, often, they lose the capacity to maintain the independent life styles made possible by the flexibility and convenience of an automobile.

Several studies list the lack of transportation as the primary barrier to older people obtaining services. Use of an automobile may be neither possible nor practical for large numbers of rural, suburban, and urban elderly. In rural and suburban areas, public transit systems are often unavailable; and the cost of private taxi service is prohibitive. In urban areas, impediments—crime, schedules, safety or the physical design of vehicles—often inhibit accessibility to public transportation for the elderly.

Legislation administered by the U.S. Department of Transportation (DOT) that impacts older persons includes The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Public Law 102–240, and the Federal Transit Act (FTA), as amended, 49 U.S.C. app. Section 1601 *et seq.* (This Act was originally known as the Urban Mass Transportation Act of 1964). ISTEA sets out policy for a National Intermodal Transportation System that will move people and goods and allow the United States to compete in the global economy in an economic, environmentally and energy efficient manner. Administered by the Federal Transit Administration, formerly the Urban Mass Transportation Administration, ISTEA has its focus on a future in which all transportation is viewed as a system. This view supports mandates in the Federal Transit Act that direct the Federal Transit Administration to address many of the issues faced by older persons as they seek access to needed transportation.

The Federal Transit Act puts the needs of the "transportation disadvantaged" on the nation's transit agenda by setting goals that include improving the mobility of older persons, persons with disabilities, and low income persons. The Act requires that highways and transit be planned together and that local communities assure maximum feasible coordination with other Federally funded transportation programs. Several provisions of the Act, in particular Sections 3, 9, 16, and 18, are focused on the improvement of transportation services for older persons. (These sections can be found at 49 U.S.C. app. Sections 1602(a)(1)(E), 1607a(e)(3)(D), 1612(a) and 1614.)

The Administration on Aging, through the implementation of OAA Title III at the area agency level, is among the primary providers of transportation services for older persons. Thus, AoA has been aware of the impact of transportation, or the lack of transportation, on the quality of life for senior citizens. Over the past several years, AoA has developed a collaborative relationship with the DOT, in particular with FTA, to improve transportation services to the elderly. One of the goals of this collaborative effort has been the coordination of transportation services at the local level. The Amendments to the Older American Act of 1992 and provisions of ISTEA have positioned local communities to strengthen existing local collaborative efforts and to initiate new efforts where none have existed.

More specifically, the Amendments of 1992 add Section 429D to the Older Americans Act which directs the Administration on Aging to carry out a Senior Transportation Demonstration Program. This priority area is intended to implement the purposes of this new program, namely to:

- Demonstrate innovative approaches for improving older persons access to health care, nutrition and other supportive services;
- Develop comprehensive, integrated senior transportation services; and
- Leverage resources for senior transportation services through the coordination of (a) various transportation services and (b) various funding sources including, but not limited to, Sections 9, 16(b)(2) and 18 of the Urban Mass Transportation Act of 1964; and Titles XIX and XX of the Social Security Act.

AoA will make awards for projects that will best carry out the following objectives:

A. Demonstrate precedent-setting strategies for enhancing senior transportation services and developing resources for those services within the geographic area served by the applicant;

B. Establish plans that ensure the coordination of senior transportation services with public (mass) transportation services as well as specialized transportation services provided within the geographic area served by the applicant;

C. Demonstrate the capacity to employ the broadest range of transportation and community resources available to the community for the provision of senior transportation services;

D. Demonstrate the capacity to cooperate and coordinate with providers of services under OAA Title III, Titles XIX and XX of the Social Security Act, health care, and providers of mass and other public and specialized transportation services for the provision of senior transportation services; and

E. Establish plans for senior transportation demonstration programs that target frail, at risk, disadvantaged and low-income elders, with special emphasis on those residing in rural areas by developing specific strategies to meet their needs.

Applicants for awards under this priority area must provide information that:

(1) Describes senior transportation services for which they are seeking assistance;

(2) Presents a comprehensive strategy for developing a coordinated transportation system or for leveraging the resources to provide the services of such a system;

(3) Describes the scope of the coordinated system with details of the responsibilities of all participants, including providers of OAA Title III, Titles XIX and XX of the Social Security Act, health care, and other social and supportive services as well as providers of mass and other public and specialized transportation services;

(4) Indicates the applicant's understanding of the state of knowledge regarding elderly transportation issues, its awareness of the work being carried out to address those issues (including the effort of the National Eldercare Institute on Transportation), and its capability for assessing the policy implications of the Senior Transportation Demonstration Program;

(5) Provides a plan for evaluating the effectiveness of the proposed senior transportation demonstration program and submits a report, suitable for submission to the Congress, documenting the project results.

Eligible applicants include State and Area Agencies on Aging, State Departments of Transportation, and

other public agencies and non-profit organizations. At least 50% of the awards will be made to entities located in, or primarily serving, rural areas. AoA expects to fund approximately five (5) projects under this priority area with a Federal share approximating $100,000 per year and an estimated project period of two (2) years.

*2.6 Demonstration Programs for Older Individuals With Developmental Disabilities*

The total number of elderly persons in the United States who are developmentally disabled is estimated to be as high as one-half million persons. These older persons are in double jeopardy. Their problems are complicated by longstanding physical or mental impairments and frequently they need individualized housing, day care, and other supportive services. Assistance, through the provision of appropriate services, to this priority older population can be made available and accessible within the community through a comprehensive, coordinated, community-based service system. This system of services should be designed to enable older persons with developmental disabilities to attain and maintain emotional well-being and independent living.

The Older Americans Act now contains several provisions which give priority attention to the need for services to elderly disabled people and cooperation with agencies and organizations regarding the developmentally disabled. For example, the Act requires the State Agency on Aging to establish and operate an Office of the State Long-Term Care Ombudsman. This Office is required to coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986.

With respect to the needs of elderly persons with severe disabilities, the Older Americans Act requires State plan assurances that the State Agency on Aging will coordinate planning, identification, assessment of needs, and the provision of services for older individuals with disabilities with State agencies primarily responsible for disabled, including severely disabled, persons. The State plan must also contain an assurance that the State will work with these agencies to develop collaborative programs to meet the needs of older individuals with disabilities.

Through Section 415 of the Amendments to the Older Americans Act of 1992, the Congress has recently given added emphasis to the issues of providing services to older individuals with developmental disabilities as well as to older individuals with caretaker responsibilities for developmentally disabled family members, both children and adults. State and local planning linkages are needed in order to facilitate the effective coordination and delivery of services to these individuals. Administrators and managers of programs that serve older and developmentally disabled persons need to increase their understanding about the interrelationships of the Older Americans Act and the Developmental Disabilities Assistance and Bill of Rights Act—their budgets, policies, organizational structures, functions, priorities, mandates, and target populations.

The purpose of this priority area, consistent with Section 415 of the 1992 Amendments, is to support the efforts of agencies that serve older and developmentally disabled persons to collaborate on State and local planning, coordination, and programs that will improve services to older persons with developmental disabilities and to older persons who care for younger family members with developmental disabilities. Such services include:

(1) Child care and youth day care programs;

(2) Programs to integrate the individuals into existing programs for older individuals;

(3) Respite care;

(4) Transportation to multipurpose senior centers and other facilities and services;

(5) Supervision;

(6) Renovation of multipurpose senior centers;

(7) Provision of materials to facilitate activities for older individuals with developmental disabilities, and for older individuals with caretaker responsibilities for developmentally disabled children;

(8) Training of State Agency, Area Agency on Aging, volunteer, and multipurpose senior center staff, and other service providers, who work with such individuals; and

(9) In-home services.

Applications are solicited from State Agencies on Aging, or Developmental Disabilities State Planning Councils, for projects to develop collaborative models which demonstrate and document successful strategies for coordinating programs and services for older persons with developmental disabilities and older individuals with caretaker responsibilities for younger developmentally disabled family members. These models should be described by the applicant in terms of the (1) Efforts of the AoA Network to develop State and local planning linkages; (2) barriers to collaboration and coordination and methods used to overcome barriers; (3) linkages with relevant agencies who share concerns in the area of aging and developmental disabilities; and (4) examples of successful integration of older persons with developmental disabilities into Older Americans Act Programs.

Applications must:

- Provide a description of the key tasks to be undertaken to implement the project as well as how the State Agency on Aging, the Area Agency on Aging and the Developmental Disabilities State Planning Council will collaborate on the project;
- Provide a description of the instructional materials to be developed under the project and discuss how these materials are designed to assist in planning, coordinating, and improving service delivery to older persons with developmental disabilities and to older individuals with caretaker responsibilities for their developmentally disabled children;
- Include a plan for dissemination of project findings along with statements from all agencies involved in the project, which clearly state their commitment to the proposed collaborative efforts aimed at serving the elderly and the developmental disabled;
- Provide evidence that the model(s) produced under the project will be ongoing once the grant terminates and describe how the effectiveness of the project will be assessed; and
- Assure that, if funded, the project's final report will include sufficient documentation and information on the implementation of the models, including the resolution of problems, to maximize the report's usefulness to other States desiring to replicate the model.

Only State Agencies on Aging or Developmental Disabilities State Planning Councils are eligible to apply under this priority area. In every case, the State Agency on Aging and the Developmental Disabilities State Planning Council must be partners in the project. State Agencies on Aging must involve the Area Agencies on Aging in developing planning linkages at the local level. The Administration on Aging plans to fund approximately five (5) projects under this priority area with a Federal share of approximately

$100,000 per year for an estimated project duration of two (2) years.

*2.7 Demonstration Projects for Intergenerational and Multigenerational Activities*

Applications are solicited to develop and implement intergenerational and multigenerational programs designed to assist families at-risk. Over the past several decades, traditional bonds within families and communities have been greatly compromised. Historically, families have taken responsibility for supporting their members. However, increased stress on families has made this more difficult. There is a growing segregation occurring between aging parents and their children and grandchildren. A growing number of older persons are now living alone and isolated. At the same time, at-risk youth face problems of poverty, drug abuse, violence, and teen-age pregnancy.

We are also seeing a growing phenomenon of grandparents assuming the role of caregiver because parents are not able to care for their own children. Programs and policies involving issues facing at-risk American families have often failed to consider the vital roles and contributions made by older family members. Policies often are created and implemented without considering the importance and relevance of the extended family network. Older persons are integral players in the family, neighborhood and community.

Intergenerational and multigenerational programming has surfaced as one vehicle for addressing some of the issues currently affecting the family and society as a whole. Intergenerational programming, planned ongoing activities between youth and older people that foster mutual growth and address community needs, has emerged as a cost-effective way of mobilizing human resources and fostering understanding. These programs have proven particularly effective because they meet numerous needs of young and old, families and communities. Programs which involve young people as resources to older persons provide an innovative way of meeting needs of the elderly and enhancing services within the community. Seniors can be an excellent resource to assist at-risk youth and their families. There is also a growing movement of the elderly and youth working together to assist with problems facing communities across this country.

Across the country, there are many programs which have been tested and are currently underway in the area of intergenerational and multigenerational programming. Many of these programs have emerged as the result of collaboration between, and joint support from, the Administration on Aging and the Administration for Children and Families. This priority area is intended to build upon the shared experience and results of these AoA-ACF collaborative efforts and to point toward future areas of interagency program cooperation designed to strengthen the bonds among generations of Americans.

Examples of intergenerational/multigenerational programs currently underway include:

- Family support programs—for example, volunteer senior aides ("family friends") providing in-home support to chronically ill and disabled children and their families;
- Intergenerational child care programs: older workers in child care centers, or child care centers operating within long-term care facilities.
- Mentoring programs—older persons provide guidance and friendship to at-risk youth;
- School tutoring programs—older persons provide assistance and tutoring to school children during and after school;
- School-based congregate meals programs for the elderly—intergenerational exchanges of services between the elderly and students at elementary, middle, and high schools;
- Literacy programs for older adults utilizing college students as tutors;
- Chore services—young persons perform a basic chore for vulnerable older persons;
- Friendly visiting—young persons visit older persons in their homes or in long-term care facilities;

The benefits of intergenerational programs to all generations and the family are numerous. Young people receive extra love and attention as well as guidance and support from a contributing and caring adult. Seniors receive needed services from the youth to help them maintain their independence. Although demonstration programs exist throughout the country, the establishment of intergenerational programs solidly within existing systems has not taken place in most communities. Rarely are intergenerational programs seen as long-term initiatives that can be integrated into the programs of national, State, and local organizations and associations.

This priority area responds to the priorities set forth in Sections 406 and 409 of the Amendments to the Older Americans Act of 1992. Its purpose is to increase and expand the commitment of organizations and associations to incorporate intergenerational and/or multigenerational programs into their agendas on a priority basis, with a focus on the role of older family members in the development of solutions to the problems that impact on American families.

Eligible applicants are organizations that employ, or provide opportunities for, older individuals to engage in multigenerational activities. In awarding grants, the Assistant Secretary for Aging will give preference to (1) Organizations with a demonstrated record of carrying out multigenerational activities and (2) organizations proposing projects that will serve older individuals with greatest economic need (with particular attention to low-income minority individuals).

The Administration on Aging (AoA) intends to make two types of awards under this priority area: 2.7.1 Demonstration Projects and 2.7.2 Technical Assistance Project.

*2.7.1 Demonstration Projects*

AoA plans to fund approximately five (5) demonstration projects at a Federal share of approximately $100,000 per project for a period of approximately 17 months. Such projects should be designed as models for testing the effectiveness of innovative approaches to multigenerational/intergenerational programming in fostering and expanding the bonds among and between generations. Projects funded under this priority area will receive technical assistance and guidance in the development and implementation of their projects. Assistance will be provided via telephone, mail and on-site visits. Plans call for project directors to attend at least one cluster meeting in Washington, D.C. during the project period.

*2.7.2 Technical Assistance Project*

AoA plans to award one project grant under sub-priority area *2.7.2* to provide technical assistance and training to the new demonstration projects. In that capacity, the project grantee will serve as an information base and program resource in promoting the effective transfer, dissemination, and utilization of relevant intergenerational and multigenerational program products and best practices. The project grantee is also expected to develop and implement a public awareness campaign aimed at promoting intergenerational and multigenerational programs to relevant audiences of organizations and associations, the aging network, and media sources.

Applicants for this grant must demonstrate a strong knowledge base and extensive experience in providing technical assistance and training in the

area of intergenerational programming. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to analyze the policy implications of this intergenerational/multigenerational demonstration program and to offer recommendations for future program initiatives.

The application must include a detailed plan for assisting approximately five (5) demonstration projects. Plans should include at least one site visit to each project and a "cluster" meeting for the new model projects funded under section (1) above. The successful applicant under this section is responsible for assisting the five (5) funded projects with the following:

(1) Providing timely and relevant background information regarding effective intergenerational programming;

(2) Training and technical assistance in program development, linkages with aging/youth networks;

(3) Assisting in strategic planning; and

(4) Increasing public awareness and commitment (including media strategies) to innovative intergenerational and multigenerational efforts.

It is anticipated that the funding support for this technical assistance and training project will be approximately $200,000 for a project period of approximately seventeen (17) months.

*2.8 Rural Mental Health Care Training for Service Providers*

The Administration on Aging (AoA) is soliciting applications to develop and conduct training programs for rural family and individual service care providers in mental health care. These awards are intended to meet the serious needs of older persons at risk of mental health impairment in areas that are underserved by mental health professionals. By training family care providers, including clergy, primary health care professionals, social workers, home care aides, and community volunteers, to detect risk factors and behavior characteristics of depression and other disorders among frail elderly and communicate this information to mental health care professionals, it is hoped that supportive care and assistance can be given to prevent further impairment and reduce the risk of major physical and mental disorder.

According to the recently released report, *Aging America: Trends and Projections* (1991), studies over the last several decades have documented that between 15 percent and 25 percent of older people have serious symptoms of mental disorder. While older persons are at the same risk of psychiatric disorder as the general population, they represent a greater proportion of persons with cognitive impairment due to organic mental disorders and a greater proportion of individuals with secondary symptoms of depression related to poor physical health, misuse of alcohol, and inappropriate use of prescriptive and non-prescriptive medications. The suicide rate is higher among the elderly than among any other age group.

The incidence of mental health disorders is highest among elderly living in institutional settings, and is a major reason for their placement or admission. With few exceptions, however, persons with diagnosed health disorders live in community settings, most in their own homes, either alone or with family members, a small proportion in small group homes. In many cases, the caregivers of older persons with mental health disorders, and often those who care for older persons with chronic physical impairments as well, have, or run a serious risk of developing, mental health problems created by heavy caregiving burdens.

The National Resource Center for Rural Elderly at the University of Missouri-Kansas City, with AoA support, recently published a resource book, *Mental Health Services for Elders in Rural America* (1991), in which the level and characteristics of mental dysfunction of the rural aged are described in detail. While it indicates there is little difference in life satisfaction between the aged in rural and urban areas, there are social, environmental, and income differences which exacerbate the vulnerability of older persons living in rural areas to problems of mental illness. Most prominent of the barriers are lack of resources, difficulty in gaining access to existing resources, and often an enduring reluctance to seek assistance, especially in situations where stigmas still persist. In 1989, fewer than 5% of patients at community mental health centers and less than two percent of patients of private psychiatrists were older adults living in non-metropolitan areas.

None of the three primary delivery systems—primary mental health (e.g. Community Mental Health Centers), the Aging Network (e.g. nutrition sites), and primary health (e.g. satellite medical clinics) are adequate to address these needs or overcome these barriers. Nevertheless, the existence of these systems for delivery of mental health, health and aging services are a potential asset if access barriers are overcome. AoA has demonstrated in previous grants that exemplary models for outreach, such as those cited by the Center for Rural Elderly, which involve training volunteers, non-traditional service providers, and non-mental health aging service providers as general purpose outreach workers for the aging, can increase the access of the more isolated elderly in rural areas to mental health services.

AoA intends to support two State-wide training grants which will demonstrate the feasibility and effectiveness of training non-mental health professionals to provide early detection and assistance to isolated frail elderly in rural settings. Applicants must be responsive to the standards specified for these rural mental health care training projects by Section 411(e) of the 1992 Older Americans Act, as amended, including involvement of qualified mental health professionals in the preparation and use of training materials, the use of community hospitals as locations for training workshops, and participation of faculty and students in non-medical departments of academic institutions with a history of interest and experience in mental health education. Each project will be expected to develop, test and revise after trial, training materials suitable for non-health professionals which increase understanding of the fundamental concepts of normal aging, increase recognition of common mental health disorders in older persons, and increase the ability to refer risks and symptoms of disorders to providers of mental health services. Applicants must include evidence of commitment and support to the objectives of their proposed project from organizations and institutions in the mental health and aging service delivery systems.

The approximate Federal share of funding for each award is $200,000 per year for a project period of up to two (2) years. The eight (8) percent indirect cost limitation for training grants will be applied for training activities involving academic institutions. Differences between the 8% rate and the institution's approved indirect cost rate may be applied to the 25% cost sharing requirement. Applicants should indicate a commitment to sustaining the project's accomplishments after Federal grant support is ended.

*2.9 Pension Information and Counseling Demonstration Program*

Retirement means many things to different people. For most people, it means an end to the regular workaday world of full time employment and a switch to part time work or leisure time and volunteer activities. For most people, retirement also means a change in the amount and the source of their income.

Depending on a person's age at the time of retirement, he or she will be eligible for social security. But social security does not and was not intended to provide all the income that a person needs in retirement. Most government employees and many people in private industry are covered by some sort of pension plan to assist them in retirement. Employee pensions account for almost 20% of the income of older persons. Overall, two out of every five older household units receive income from public and/or private pension benefits other than Social Security.

Nevertheless, the adequacy, availability, coverage, and reliability of pensions remain as issues. In particular, problems arise when people move from company to company during their careers, when companies go out of business, or when companies are bought out by other companies and pension plans take on a different form. Compounding this problem are the myriad of entitlements and restrictions that are built into different pension plans, occasionally rendering them almost unintelligible to anyone but highly trained legal experts.

Recognizing the large unmet need to provide older Americans with information and counseling in the area of pension benefits, Congress provided in Section 419 of the Amendments to the Older Americans Act of 1992 for the funding of Pension Information and Counseling Demonstration Projects. In response to that mandate, under this priority area the Administration on Aging (AoA) will fund a number of demonstration projects as well as a training and technical assistance project to provide support to the pension information and counseling effort. Both types of projects should address not just how to obtain pension benefits, but also how to live on and wisely invest the benefits which the retiree receives.

Under priority area 2.9.1, AoA intends to fund approximately six (6) demonstration projects at the State or local level that seek to provide outreach, information, counseling, referral and assistance in the area of pension benefits. These projects shall:

- Provide counseling and assistance to individuals needing information that may assist them in establishing rights to, obtaining, and filing claims or complaints relative to pension and other retirement benefits;
- Provide information on sources of pension and other retirement benefits;
- Make referrals to legal and other advocacy programs;
- Establish a system of referrals to Federal, State, and local Departments or agencies relative to pensions and other retirement benefits;
- Establish outreach programs to provide information, counseling, assistance and referral regarding pension and other retirement benefits with particular emphasis on outreach to women, minorities and low income retirees; and
- Provide basic information to people about what options are available to them for their retirement annuities.

Projects should consider the possibility of locating at senior centers or other places where seniors tend to congregate. They should also consider the possibility of training volunteers to work with claimants on many of the details that do not require legal interventions.

Applicant eligibility for pension information and counseling demonstration project awards is limited by statute (Section 419 of the 1992 Older Americans Act Amendments) to State and Area Agencies on Aging and nonprofit organizations with proven experience in the counseling of older persons regarding retirement benefits and pension rights. AoA intends to support each of the projects at a Federal share of approximately $75,000 for a project period of approximately seventeen (17) months.

Under priority area 2.9.2, AoA intends to fund one technical assistance project that will strengthen the role of the demonstration projects, State and Area Agencies on Aging and legal services providers, both public and private, in providing pension assistance and encouraging coordination among these groups. This project will provide technical assistance to the demonstration projects and to legal services projects that seek to develop programs on pension benefits counseling. The project will (1) develop a cadre of trained legal experts who are willing to work with local personnel and claimants who need to access the private pension sector and (2) provide training for professional and volunteer personnel who will work with older Americans at the State and local level to assist them in understanding and gaining better access to their pension rights and options.

Applicants for this grant must demonstrate a strong knowledge base and an extensive experience of providing national information, counseling, and advocacy in matters related to pension and other retirement benefits. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to analyze the implications of the demonstration projects in the broader context of tax policy, pension reform, and retirement planning, and to offer recommendations for future program initiatives related to pensions and income security for older Americans.

AoA intends to support this project at a Federal share of $200,000 for a project period of approximately seventeen (17) months.

*2.10 Music Therapy, Art Therapy, and Dance-Movement Therapy Projects*

Growing old may present a number of challenges and crises, both physical and psychological. Music, art, and dance-movement therapies can offer a psychotherapeutic approach to ameliorating or staving off problems related to aging. These therapies are designed to restore or improve physiological and/or psychological functioning. These therapies have been used with the elderly in institutions, convalescent homes, respite care and day care centers. While some research has been conducted, much remains to be done to demonstrate their effectiveness and to adapt them to the special needs of institutionalized elderly or elderly at risk of losing their independence.

In response to a priority established by Congress through Section 406 of the Amendments of the Older Americans Act of 1992, the Administration on Aging (AoA) is inviting applications to advance our understanding of the efficacy and benefits of providing music therapy, art therapy, or dance-movement therapy to older individuals. Section 406 authorizes both (1) research and demonstration projects and (2) education, training, and information dissemination projects as outlined in the following two sub-priority areas. Projects funded under these two sub-priority areas will be resonsible for submitting to AoA a report that (1) documents the results and findings of their projects and (2) presents recommendations on means for providing art, music, or dance therapy to older persons more effectively and efficiently.

*2.10.1 Music/Art/Dance-Movement/ Therapy Research and Demonstration Projects*

AoA is interested in funding projects which will study, demonstrate, and evaluate the provision of music therapy, art therapy, or dance-movement therapy to older individuals who are institutionalized or at risk of being institutionalized. Project topics should include, but are not limited to:

- The effect of these therapies on neurological functioning, communication skills, and physical rehabilitation in older adults;
- Their efficacy as interventions in improving cognitive, emotional, and social functioning in persons with Alzheimer's disease and related dementias; and
- Their efficacy as interventions in the care of elderly persons at risk of being institutionalized.

Local program settings for such projects would include:

(1) Nursing homes, hospitals, rehabilitation centers, hospices, or senior centers;

(2) Disease prevention and health promotion services programs established under part F of Title III of the Older Americans Act;

(3) In-home services programs established under part D of Title III;

(4) Multigenerational activities programs described in Section 307(a)(41)(B) or subpart 3 of Part C of Title III;

(5) Supportive services programs described in Section 321(a)(21) or;

(6) Disease prevention and health promotion programs described in Section 363(5).

Applicants should discuss the following in detail: (1) How the demonstration project will further our understanding and knowledge of music/art/dance-movement therapy provided to the elderly;

(2) How the project will collaborate with local program sites as described above and with other local organizations/specialists whose skills will be needed in the project;

(3) How project products (i.e. videos, manuals) will be broadly disseminated; and

(4) How the project goals and outcomes will be evaluated.

Eligible applicants under this sub-priority area are organizations which represent certified and registered music/art/dance-movement therapists and other organizations which are qualified to administer these projects. AoA plans on making 4 to 6 awards under this sub-priority area with a Federal share of approximately $75,000 to $100,000 for a project duration of approximately twelve (12) months.

*2.10.2 Education, Training, and Information Dissemination Projects for Music/Art/Dance-Movement Therapists and the Aging Network*

Under this sub-priority area, AoA is interested in supporting:

(1) Education and training projects which will provide gerontological training to music/art/dance-movement therapists and/or education and training of individuals in the aging network regarding the efficacy and benefits of music/art/dance-movement therapy for older individuals; and

(2) Information dissemination projects to provide the aging network, and music/art/dance-movement therapists, background materials on music/art/dance-movement therapy, best practice manuals, and other information on providing music/art/dance-movement therapy to older individuals.

Applicants should discuss in detail:

(1) How the proposed project will benefit older persons by an interchange of knowledge and a sharing of professional skills among the gerontological community, the aging network, and the practitioners of art, dance-movement, and music therapy;

(2) How education, training and information dissemination will be conducted;

(3) How project products (i.e. videos, manuals) will be broadly disseminated; and

(4) How project goals and outcomes will be evaluated.

Eligible applicants under this sub-priority area are organizations, including music/art/dance-movement therapist organizations, which are experienced and knowledgeable in providing education and training in gerontology and in disseminating information and materials on music, art, and dance-movement therapy. AoA plans on making 3 to 5 awards under this sub-priority area with a Federal share of approximately $100,000 for a project duration of approximately twelve (12) months.

*2.11 AoA Dissemination Projects*

Each year, AoA invests substantial Older Americans Act Title IV resources in grant and cooperative agreement projects to conduct research, demonstrations, and training to improve the quality and availability of services and programs that are vital to the well-being of at-risk older persons. Dissemination is a basic component of each of these projects. Every Title IV project is required to conduct appropriate dissemination of project results as part of its work plan. For the many projects which are essentially knowledge transfer activities (e.g., technical assistance, public/professional education), dissemination is the key component.

Enhanced dissemination is still needed, however, to maximize the utility of Title IV projects. The urgency to improve the effectiveness and availability of services is especially pronounced as both fiscal constraints and the number of older Americans increase. The ultimate goal of this priority area is to maximize the utilization of Title IV project products and results that can directly benefit older Americans in need of services.

The AoA Dissemination Projects funded under this priority area are also expected to foster greater awareness of the challenges of an aging society and of the contributions, real and potential, that aging programs make in responding to those challenges. These awareness-building efforts may take several forms, including the development and dissemination of materials keyed to decisionmaking points on a particular aging issue and the use of appropriate communication mechanisms.

Two types of project applications may be submitted for review and funding consideration under this priority area:

A. Enhanced Dissemination of Product(s) of Significant Value

A major purpose of this priority area is to support more extensive dissemination of Title IV products of significant value. In the course of performing their work, grantees sometimes develop especially valuable products which warrant dissemination beyond that originally contemplated or for which dissemination opportunities are found which were not envisioned earlier. Where the grantee is convinced that such products are both needed and of demonstrated value to the aging network and/or others involved in improving the availability, effectiveness, and quality of aging services, it may apply under this section for further funding. (This opportunity applies to both current and former grantees whose projects were completed after January 1, 1990).

Applicants may address the dissemination of either a single product or more than one product from a single project. In this context, the term "product" may include the "Final Report" as well as other project products such as manuals, handbooks, curricula, brochures, technical assistance materials, reports, audio-visual materials, etc.

B. Syntheses of "Cluster" Projects Results and Products

A second purpose of this priority area is to support the development and dissemination of syntheses of project products/results from earlier Title IV project "clusters" (e.g., projects funded under the same priority area under a previous AoA Discretionary Funds Program announcement). Projects in a cluster may vary widely in terms of approach, products, and outcomes but all deal with the same subject matter or problem area. A synthesis of needed and useful products/results of these projects may well have synergistic value, and a multiplier effect, in generating knowledge and substantiating best practices which can be applied to the benefit of older Americans.

Such a synthesis may take various forms. An applicant may synthesize exemplary products as produced—or change the form of the product to maximize utilization. Creative adaptations may be needed. A compilation of relevant demonstration or research *results* (and/or recommendations) from the cluster may be what is needed. Applicants are encouraged to be innovative in their response to this priority area. The need for additional product(s) or outcomes of the synthesis should be demonstrated. A strategy for promoting utilization must be included as part of the application.

Applications of either of the types described above should carefully specify not only what dissemination activities are to be performed but also: (1) Why the product(s) is important, (2) to whom it is important, (3) what would be the results and benefits of dissemination and utilization of the product(s), and (4) what specific actions such as training or technical assistance would the proposed project undertake to assist those who wish to adapt or adopt the products and/or the recommendations contained in the products.

In preparing applications under this priority area, applicants may find useful the publication *Dissemination by Design* which was produced as part of an AoA Title IV project. Interested applicants who do not already have a copy of this publication may obtain one by contacting AoA's Office of Program Development (OPD) at (202) 619–0441. (There is no requirement to use this particular reference in the development of your application.)

Applicants may also request an information sheet on the AoA-supported National Eldercare Dissemination Center, which works with AoA to promote dissemination of the products of Title IV grantees. The Center is available to provide technical assistance on dissemination and utilization to prospective applicants under this priority areas. Prospective applicants are encouraged to utilize this resource. The Director of the Center is Theresa Lambert. She can be reached at (202) 898–2578. Projects funded under this priority area will be expected to work cooperatively with the Dissemination Center.

Applicants under this priority area are limited to current and former Title IV grantees and cooperative agreement awardees. AoA expects to fund approximately 10 to 12 dissemination projects under this priority area. The Federal share of awards will range from approximately $25,000 to $50,000, depending upon the level of activity proposed, for a project period of approximately twelve (12) months.

*Section B: Application Deadline: September 10, 1993*

III. More Effective Aging Programs and Better Services to Older Americans

*3.1 Career Preparation, Education, and Training for the Field of Aging*

Under the discretionary program authority of the Older Americans Act, the Administration on Aging (AoA) has given support for almost three decades to encourage the growth of education and training in aging and gerontology in academic and related institutions. During this period, there has been rapid expansion in the knowledge base for aging; faculty, curriculum, and other instructional resources for education and training have increased; and certificate and degree programs for academic and professional careers in the field of aging have grown in quality and number.

National surveys of gerontological program development indicate, however, that growth has been uneven with marked variations by type of institution, by subject/content area, and by instructional program orientation. Overall, Federal funding for behavioral and social gerontological research and training has been declining for more than a decade, a likely contributing factor in the slowdown of programs that train skilled personnel in the care and service of vulnerable older persons. Shortages in gerontological education and training resources have had pronounced effects on minority gerontological education and on the development of minority faculty and graduates; neither resource has kept pace with the needs of growing minority aging population groups. Nowhere is the gap between what is needed and what is being accomplished greater than in the nation's community colleges. Despite the fact that these institutions constitute more than half of the academic institutions in the United States and enroll more than one quarter of the students, community colleges have fewer than 10% of the gerontology programs and 5% of the courses with aging content.

To help meet these challenges in career preparation and gerontology education and training, AoA intends to focus new project grants for education, training, and career preparation in the field of aging on the four sub-priority areas specifed below. These initiatives respond to the career education and training mandates of the Older Americans Act, with special emphasis on the specific provisions added by Section 418 of the 1992 Older Americans Act Amendments. Applications are sought under four general categories:

(1) Career Education Program Development in Institutions of Higher Education with High Minority Student Enrollment;

(2) Faculty and Program Development in Gerontology;

(3) Gerontology Training Program Development in Two-Year Academic Institutions; and

(4) Research and Technology Innovation in Gerontological Education and Training.

*3.1.1 Gerontological Training and Education Programs in Institutions of Higher Education With High Minority Student Enrollment*

Applications are solicited from academic institutions with substantial enrollments of students from one or more of the four racial and ethnic minority populations: African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans. The applications must focus on the development or improvement/strengthening of gerontology programs which lead to an educational specialty, emphasis, certificate, or degree in gerontology/aging. To maximize discretionary program resources and to promote a level playing field of competition, distinctions are made by AoA under this sub-priority area between those institutions of higher education with high minority student enrollments which (A) have established gerontology programs of education and training to prepare students for careers in the field of aging, and (B) those institutions of higher education which aspire to develop such programs. An established gerontology program is one which offers an academic credential

(e.g. certificate, degree) to students who complete a series of core and elective courses.

To be eligible for funding under either sub-priority area 3.1.1A or sub-priority area 3.1.1B, applicants must give evidence of their designation as a Historically Black College or University, or as a Hispanic Center of Excellence in Applied Gerontology as defined by Section 418 of the Older Americans Act Amendments, or evidence of their membership in the American Indian Higher Education Consortium. Other applicants are also eligible, provided they show evidence of substantial minority student enrollment and minority faculty appointments in the school(s), college(s), department(s) or program(s) whose gerontological education and training activities will be supported under the application.

*3.1.1A Gerontology Program Improvement Grants*

Applicants in the first category (3.1.1A) should focus on better coordination of instructional programs in gerontology across disciplines and departments, or on working in concert with other colleges and universities on faculty development, enhanced curricula, improved programs of community service to at-risk minority elderly, and other joint undertakings of an enterprising and practical nature. Particular emphases might include faculty and student exchanges among institutions with complementary aging study programs, work-study arrangements as practicum experiences, week-end and evening programs for in-service personnel seeking job certification and career advancement in the field of aging.

AoA plans to make approximately ten (10) awards under sub-priority area 3.1.1A with a Federal share of approximately $150,000 to $175,000 per year for a project period of up to two (2) years. In the making of awards under this sub-priority area, consideration will be given by the Assistant Secretary for Aging to institutions of higher education representative of different geographic areas and of each of the four minority population groups.

*3.1.1B Program Development Grants*

Applicants under sub-priority area 3.1.1B must show a general plan for program development for the full two-year period and a detailed plan for the first project year. Components of this plan should include: the resources available among existing faculty; the recruitment of new tenure track and/or adjunct faculty; the use of existing courses and development of new courses; student recruitment goals; practica or clinical placement activities; strategies for gaining institutional approval of a certificate or degree program in gerontology; and the use of outside consultation for planning and evaluation.

During the first project year, applicants may use Federal funds for waiver of tuition for courses with aging content to recruit new students to the program. Funds in the second year may be used as stipends for students taking required practica or clinical placement in gerontology. Applicants must demonstrate in their budget allocations, and in the commitment of the leadership of their institution, their intention to sustain the gerontology training program, and continue the courses developed, beyond the period of AoA support.

Applicants in this category, namely academic institutions that are seeking to develop gerontology career preparation, education, and training programs, will be competing for approximately eight (8) awards under sub-priority area 3.1.1B with a Federal share of approximately $125,000 to $150,000 per year for a project period of up to two (2) years. In the making of awards under this sub-priority area, consideration will be given by the Assistant Secretary for Aging to institutions of higher education representative of different geographic areas and of each of the four minority population groups.

*3.1.2 Faculty and Curriculum Program Development in Gerontology*

Studies and reports funded by the Administration on Aging (AoA) and others have identified a continuing need for faculty and program development in gerontology and geriatrics. These studies indicate that all health and human services professional schools should have faculty with expertise in aging to teach their students about the aging process. The professional schools should be able to assume leadership roles in training personnel to participate in community based long term care service systems for older persons. This sub-priority area is designed to respond to these needs and challenges.

AoA has identified three (3) categories for submission of applications under this sub-priority area, as outlined below. Under this sub-priority area, AoA expects to fund up to five projects, with a Federal share of approximately $100,000 per project and an estimated project duration of seventeen (17) months. Eligible applicants in this priority area are limited to institutions of higher education and national and State professional associations.

(A) *Faculty Development.* AoA is soliciting applications to conduct training activities for in-service faculty development programs that have the following characteristics:

(1) Involve at least 10 persons with instructional or faculty appointments in academic institutions other than applicant organization;

(2) Have structured intermittent or continuous programmatic activity for participating faculty that covers at least two academic semesters or three academic quarters; and

(3) Require written commitment from participants and their academic chair or dean to develop or enhance teaching of aging concepts within one year of completion of their training.

(B) *Aging Content in Professional Academic Training.* AoA encourages the inclusion of aging content in programs leading to certification or an academic degree for persons preparing for employment in occupations that significantly impact on the elderly population. Professionals and paraprofessionals who would benefit from specialized gerontological or geriatric content in their career preparation include, but are not limited to: Physical therapists, counselors, occupational and recreational therapists, home economists, pharmacists, and home health aides. Applications may be submitted which focus their gerontological/geriatric training on other professions and occupations. However, in these cases, the applicant must document that significant gerontological or geriatric components have not been developed for these professions or paraprofessional occupations.

Each application in this category should provide:

(1) A statement clearly specifying the single professional or paraprofessional occupation being targeted;

(2) Evidence that the State Agency on Aging has been significantly involved in the design of the training proposal;

(3) Evidence that the proposed activity is in response to documented needs for aging content in the profession targeted for training;

(4) Evidence that the proposed activity will be on-going once the grant terminates;

(5) A brief description of current gerontology courses or program offered at the institution together with a discussion of how the proposed activity would strengthen or enhance the existing program; and

(6) Written commitments and assurances of support from agencies or organizations significantly involved in the proposed project.

(C) *Curriculum Replication Consortium Programs.* AoA is interested in replicating and disseminating curriculum in which gerontological content has been integrated into the regular training of various professional disciplines such as those listed above. Such efforts should focus on consortia arrangements, whereby the expertise of those institutions, which have successfully integrated gerontology into the curricula of professional disciplines, is utilized to achieve comparable results in other professional schools that have had little or no experience at incorporating gerontology into their curricula.

Applications are solicited from institutions of higher education, or national and state professional organizations, that have demonstrated experience in curriculum development, to work with three to five institutions interested in developing gerontology programs of instruction. The curriculum should focus on aging concepts and best practices for working with the elderly. Each application should include the following:

(1) A statement clearly specifying the profession or paraprofession being targeted;

(2) Written assurances from the institutions that will be involved in the collaborative arrangement; and

(3) Evidence that the collaborative effort is based on a documented need for content in the profession targeted as well as a need for technical assistance by the institutions involved.

*3.1.3 Gerontology Training Program Development in Two-Year Academic Institutions*

Applications are invited from community colleges, vocational schools, and technical institutes, with accredited two-year post-secondary education programs to develop (3.1.3A) instructional programs for individuals interested in working in the field of aging and (3.1.3B) instructional programs for persons age 50 and older who seek employment or re-employment in the work-force. Applicants under either sub-priority area 3.1.3A, or sub-priority 3.1.3B as described below, may apply for an award with a one or two year project period. Awards to institutions serving one campus location will be made with a Federal share of approximately $75,000 per year. Awards to multi-campus institutions with proposed activities in more than one location will be made with a Federal share of approximately $100,000 per year.

Depending on the number of qualified and highly rated applications received in each category, it is anticipated that approximately ten (10) grant awards will be made, including five (5) for career development, 3.1.3A, and five (5) for older worker training, 3.1.3B. All applicants must demonstrate how their program efforts are designed to reach low income and minority students (African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans). At least one award in each sub-priority category will be made to an institution located in and serving a rural area.

*3.1.3A Gerontology Instructional Programs for Career Development*

• Applicants requesting support for two-year projects must indicate that their career development project is a substantially new programmatic effort which is designed to qualify students, through certification of program completion, for jobs in the field of aging. Proposals must give consideration to how successful models of two-year gerontology instructional programs might be adapted to their purposes and circumstances. The applicant must also demonstrate that their proposed gerontology program is intended, by the end of the period of AoA support, to be in substantial accordance with the minimal guidelines and standards for such programs set forth by the Association for Gerontology in Higher Education.

• Applicants requesting support for one-year projects must demonstrate that they have an on-going instructional program in gerontology. Project awards may be used to strengthen existing programs to bring them into compliance with quality standards, or to expand and improve other components of their aging programs, including short-term training; older adult education (other than employment training); public information; and other community-oriented activities which involve cooperation with the local Area Agency on Aging and/or Older Americans Act service provider organizations.

*3.1.3B Employment Training of Older Adults*

• Applicants requesting support for two-year projects must demonstrate that: (1) Their older adult employment project is a substantially new programmatic effort designed to meet the need for employment training of low-income older persons in their enrollment catchment area; (2) that the need for employment training is not adequately addressed by other worker training programs; and (3) that their proposed effort will be coordinated, as appropriate, with employment training programs supported by the Department of Labor, other Federal agencies, and State and local authorities. Proposals must clearly specify what activities will be developed to support recruitment, counseling, and placement of older students who receive instruction in age-integrated classrooms. Advisory boards are expected to be organized to provide input and oversight to planning and implementation. Board membership should include representatives of Area Agencies on Aging, employment agencies, small businesses, corporations, voluntary service groups, and local representatives of aging membership organizations.

• Applicants requesting support for one-year projects must demonstrate that they have an on-going older work training program. Proposals must clearly specify how improvement or expansion of their program will (1) address unmet needs of older workers in their institutional catchment area and (2) operate in cooperation with the program efforts of Area Agencies on Aging, other aging agencies, and Federal/State supported employment training agencies. Among applications of comparable merit, preference will be given to applicants who demonstrate that they will recruit and train, and cooperate with employers to hire older workers who have recently lost their jobs due to corporation downsizing, plant shutdowns, or the relocation of facilities.

*3.1.4 Research and Technology: Innovation in Gerontological Education and Training*

Applications from academic institutions, higher education organizations, and professional membership societies are invited to (1) develop and demonstrate new uses of instructional technology in gerontological education and training and (2) convert research findings and state-of-the-art materials more effectively and more expeditiously into gerontology course curricula and classroom teaching for students preparing for careers in the field of aging. Among the suggested areas for inclusion in applications under this sub-priority area:

(1) Use of tele-communications and other remote learning approaches for teaching students outside of the traditional on-campus classroom.

(2) Approaches to enrich the course work and teaching of the medical, biological, and health care aspects of aging for undergraduate students who are not preparing for careers in the health care professions.

(3) Strategies for enfusing minority and multi-cultural aging issues into gerontology curricula, course work, and teaching of gerontology.

(4) Strategies and incentives for Schools of Education, other teacher training programs, and national educational associations of school professionals, to include a multi-generational focus in teaching curriculum development and instructional methods.

(5) Strategies for increasing interest and commitment of two year academic institutions in developing comprehensive programs in such areas as career development, continuing education, family education and counseling, and multigenerational activities.

AoA intends to make approximately four (4) awards under this sub-priority area with a Federal share of approximately $100,000 for a project period of approximately seventeen (17) months. Because these projects focus on technology innovation and on model and pilot education projects, the 8% indirect cost limitation on training awards is *not* applicable.

*3.2 Supportive Services in Federally Assisted Housing Demonstration Projects*

In accordance with Section 410 of the 1992 amendments to the Older Americans Act, the Administration on Aging (AoA) is soliciting proposals for demonstration projects which will develop model programs of supportive services in Federally assisted housing. These projects will involve the network of State and Area Agencies on Aging in the development and operation of these model supportive services programs, working in collaboration with local housing agencies (e.g. State Housing Finance Agencies, Farmers Home Administration (FmHA) State offices, and the Department of Housing and Urban Development (HUD) field offices).

A growing number of frail older individuals residing in Federally assisted housing projects face premature or unnecessary institutionalization due to the absence of, or deficiencies in, availability, adequacy, coordination, or delivery of community based long term care supportive services. Approximately 365,000 older individuals in Federally assisted housing experience some form of frailty, and the number is expected to increase as the general population ages. Often, the supportive service needs of these frail residents are beyond the resources, experience, and capabilities of the housing program management officials and Aging Network agencies. Both HUD and FmHA recognize that housing managers in projects for the elderly generally lack the training and skills necessary to deal with an increasingly frail elderly population. The 1990 and 1992 amendments to the National Affordable Housing Act authorize the positions of service coordinators in HUD and FmHA housing projects.

This priority area is aimed at developing and testing model supportive service programs to frail residents who are aging in place in Federally assisted housing and, where possible, to other frail older persons who need such supportive housing. Applicants for grant awards under this priority area must include the following:

(A) Documentation of the lack of, and need for, supportive services in Federally assisted housing projects located in the geographic area to be served by the proposed project. Such supportive services include: meal services; transportation; personal care, dressing, bathing, and toileting; housekeeping and chore assistance; nonmedical counseling; case management; and services provided under the Older Americans Act, and other legislation, to prevent premature and unnecessary institutionalization.

(B) A comprehensive plan to coordinate with housing facility management to provide services to frail older individuals who are in danger of premature or unnecessary institutionalization;

(C) Information demonstrating initiative on the part of the applicant agency to address the supportive service needs of residents;

(D) Information demonstrating financial, in-kind, or other support available to the applicant from State or local governments, or from private sources;

(E) An assurance that the applicant agency will participate in the development of local Comprehensive Housing Affordability Strategy (CHAS) plans established under the 1990 Cranston-Gonzalez National Affordable Housing Act and seek funding for supportive services under HUD and FmHA programs;

(F) An assurance that the applicant agency will conduct outreach to, and target services for, low-income minority older individuals;

(G) An assurance that, in carrying out the demonstration project, the agency will follow the following guidelines:

(1) Older persons are eligible for services if their level of frailty, based on physical and/or mental disabilities/impairments, limits their ability to perform one or more activities of daily living.

(2) Residents who receive services will be given the opportunity to make contributions to defray the cost of those services, provided their decision to make a contribution can be made in confidence, the applicant agency similarly agrees to accept such contributions in confidence, and all parties concerned are assured that such contributions are truly voluntary and there is no basis for denying services to a resident who has not made a contribution.

(H) A plan to evaluate the eligibility of older individuals for services which includes a professional assessment committee to conduct such evaluations and identify such individuals:

In addition to setting forth in its application a comprehensive plan for the establishment of model programs of supportive services in Federally assisted housing, the applicant shall also propose to carry out an evaluation of the effectiveness of the program and report the results of the evaluation in its final project report.

In 1990, AoA funded a cluster of nine (9) projects similar in purpose to the projects proposed under this priority area. Grantees were either State Housing Finance agencies or State Agencies on Aging. Those demonstration projects developed models for Statewide approaches to increasing supportive services in Federally assisted housing. Information on the projects is available by calling the Office of Program Development of the Administration on Aging at (202) 619–0441. Project activities included:

- Development of Statewide agreements and community plans between Agencies on Aging and housing, health and social services and finance agencies which resulted in increased supportive services to the elderly;
- Public education on issues related to older persons aging in place in Federally-assisted housing facilities and the need for supportive services; and
- Technical assistance to the housing network and building managers on ways to increase the availability of supportive services, working with the elderly and their families, accessing community resources, and methods to acquire information about elderly residents on a regular basis and assessing their service needs.

Projects proposed under this priority area should reflect a reasonable comprehension of the work accomplished under the earlier set of AoA-funded model projects for increasing supportive services to the

elderly in Federally-assisted housing, but must not duplicate those projects. Applicants should also be aware of the AoA-funded National Eldercare Institute on Housing and Supportive Services at the University of Southern California. This Institute provides information on housing as it relates to the needs of the elderly. The Director of the Institute is Dr. Jon Pynoos. He may be reached at (213) 740–1364.

Applicant eligibility is restricted to State Agencies on Aging and Area Agencies on Aging. AoA intends to make approximately five (5) awards with a Federal share of approximately $100,000 per year for a project period of two (2) years.

*3.3 Housing Demonstration Program*

Housing options are at a premium for increasing numbers of American families. Included in these numbers are older Americans who find that entrance into the "golden years" has limited their housing opportunities by placing them in precarious situations when it comes to securing and maintaining adequate housing and living arrangements. Many older persons living in Federally assisted housing lack access to supportive services. Other older persons are experiencing problems in their efforts to maintain the homes they own or to continue occupying rented residences. Still other key issues involve the rights of frail older tenants and protection from financial exploitation by relatives, landlords, or others.

Recognizing the myriad of housing issues older persons face, Congress has incorporated specific mandates into the 1992 amendments to Title IV of the Older Americans Act. To meet these mandates, the Administration on Aging (AoA) has developed Priority Area 3.2, Supportive Services in Federally Assisted Housing Demonstration (please refer to the preceding priority area in this announcement); and this Priority Area 3.3, Housing Demonstration Programs which focuses on model housing ombudsman and other programs to assist older persons in danger of foreclosure or eviction. This priority area is based on Section 416 of the 1992 Amendments which amends the Older Americans Act by adding Section 429G. Housing Demonstration Programs. It contains two subpriority areas: 3.3.1 Housing Ombudsman Demonstration Projects and 3.3.2 Foreclosure and Eviction Assistance and Relief Services Demonstration Projects.

*3.3.1 Housing Ombudsman Demonstration Projects*

AoA recognizes the need to develop mechanisms that will provide older persons in publicly assisted housing sorely needed assistance in resolving issues dealing with their care and services and in protecting their rights, safety, and welfare. One innovative model for these purposes now emerging is the Housing Ombudsman, similar in form and function to the now familiar State Long-Term Care Ombudsman programs. This subpriority-area, accordingly, is designed to support the demonstration of model Housing Ombudsman Programs.

Older individuals, living in or attempting to become residents of publicly assisted housing, experience a range of problems related to housing, the condition of homes, and their economic status. Elderly residents of publicly-assisted housing are continuing to "age in place." Moreover, while the current population of public housing residents has become significantly older and more frail, the average age of new tenants moving into these projects has increased. As these tenants age in place, and new tenants with similar service requirements arrive, the demand for services tends to increase. Again, access surfaces as a primary concern. At issue is the opportunity to obtain social and supportive services in the form of direct assistance or referral for problems related to housing and living arrangements. For older tenants at risk of losing their independence, certain services have become essential, among them: information regarding housing options or programs available; counseling on financial, health, social, and familial matters; and the intercession of an advocate on individual and collective matters related to the rights, safety, and welfare of housing residents.

Over the past few years, several attempts have been initiated to address the needs of older people in this area. Major legislation such as the National Affordable Housing Act of 1990, Public Law 101–625, mandates that all States and local jurisdictions submit a Comprehensive Housing Affordability Strategy (CHAS) to the Department of Housing and Urban Development in order to qualify for funding for all federal housing programs. The Act requires the local office assigned to develop the CHAS to consult with social service agencies regarding the housing needs of low-income elderly citizens. Under Sections 8 and 202, the Act also allows for the hiring of Service Coordinators, to be funded through Section 8 funds, who would be responsible for assuring that residents of Section 202/8 housing projects for the elderly are linked to the supportive services they need to continue to be independent.

Many States, through grants from AoA and the Robert Wood Johnson Foundation, have also created the position of supportive service coordinators to assist the elderly to receive needed services. These projects are well worth noting. Not only do the coordinators relieve the increasing pressure on project management but they enable the elderly residents to remain in their apartments as long as possible. Unfortunately, few housing programs/projects for the elderly have supportive service coordinators nor are they equipped to deal with the broad array of questions, issues and problems of older residents of publicly assisted housing. Senior citizen organizations offer a variety of services but those are not necessarily focused on or coordinated with the programs provided in Federally-assisted housing for the elderly.

Applicants under this sub-priority area should propose model Housing Ombudsman Program demonstration projects to provide information, advice, and advocacy services to (1) older individuals participating in Federally assisted and other publicly assisted housing programs and; (2) older people seeking Federal, State, and local housing programs.

Specific services to be provided by the Housing Ombudsman Program demonstration projects should include:

- Direct assistance or referral to services to resolve complaints or problems;
- Information regarding available housing programs, eligibility, requirements, and application processes;
- Counseling or assistance with financial, social, familial, or other related matters that may affect or be influenced by housing problems;
- Advocacy related to promoting the rights of older individuals residing in publicly assisted housing programs and to improving the quality and suitability of housing in the programs;
- Assistance with problems related to housing regarding:

—Threats of eviction or eviction notices;
—Older buildings;
—Functional impairments;
—Unlawful discrimination;
—Regulations of HUD and the Farmers Home Administration (FmHA);
—Disability issues;
—Intimidation, harassment, or arbitrary management rules;
—Grievance procedures;
—Certification and recertification related to programs of HUD and the FmHA; and

—Issues related to transfer from one project or program to another.

Since this competition is for model demonstration projects with implications for other States throughout the nation, applicants should propose procedures covering the above areas that draw upon materials and approaches developed by the statewide Long Term Care Ombudsman program, where appropriate. Demonstration projects might include areas such as developing standards to assist ombudsman with the evaluation and monitoring of their efforts, training programs for staff, and alternative intervention strategies to assure resident needs are being met.

Proposals are invited from State Housing Agencies, State Agencies on Aging, Area Agencies on Aging (AAAs) and other nonprofit entities, including providers of services under the State Long Term Care Ombudsman program and the elder rights and legal assistance development programs as described in chapters 2 and 4 of subtitle A of Title VII of the Older Americans Act.

Applications must include the following:

(1) An assurance that the agency conducting the demonstration program will conduct training of professional and volunteer staff who will provide the Ombudsman services and;

(2) If submitted by an Area Agency on Aging, an endorsement of the program by the State Agency on Aging and an assurance that the State Agency on Aging will work together with the Area Agency on Aging in carrying out the project;

(3) An acceptable plan to involve in the demonstration program the Department of Housing and Urban Development, the Farmers Home Administration, and other agencies through which the agency provides services or which are involved in publicly assisted housing programs; and

(4) A commitment that an evaluation of the effectiveness of the model Housing Ombudsman Program project will be conducted and a report presenting the findings of the evaluation shall be submitted to AoA not later than 3 months after the end of the project.

AoA intends to make approximately five (5) awards under this subpriority with an approximate Federal share of $100,000 per year for an estimated project period of two (2) years.

*3.3.2 Foreclosure and Eviction Assistance and Relief Services Demonstration Program*

The Administration on Aging (AoA) recognizes the need to break new ground in the formulation and/or implementation of policies and programs to assist older persons more effectively with the resolution of issues related to foreclosure and eviction. Protection of an older person's rights, safety, and welfare are paramount when it comes to housing. Accordingly, AoA has developed this sub-priority area to support the demonstration of model strategies that will allow the effective implementation of laws and regulations designed to prevent or delay foreclosures and evictions among older persons.

It is not uncommon for a provider of legal or supportive services, an officer of landlord tenant court, or the agency accepting an application for subsidized housing to find that the older person, whether home-owner, tenant, or housing applicant, is in a vulnerable position that could have been avoided had they been provided some timely counsel and other assistance. Older persons can find themselves in the position of potential foreclosure or eviction for any number of reasons. Some elders have fallen victim to unscrupulous lenders due to refinancing transactions and find that they can not make outrageous monthly payments. In many of these instances, state usury laws are ambiguous, not applicable or, even worse, non-existent. Other older persons find, too late, that they have unknowingly signed away their homes because they did not, or could not, read the fine print. Sadly, others fall victim to financial manipulation or other abuses by relatives or friends. In short, many older persons have some incapacity that has precipitated the late or missed payments that lead to foreclosure or eviction.

The October 1991 edition of the National Clearinghouse Review, a legal services publication, reported "a significant increase in the number of older persons who have been denied admission to or evicted from rental housing due to, what are often mistaken, perceptions of their inability to live independently." Community opposition, embodied in zoning barriers, to group living arrangements further restricts an older person's choice of housing. In short, there are a host of factors that impinge upon the ability of older homeowners and renters to "age in place" and live as independently as possible.

Federal legislation to remedy these kinds of situations includes the Fair Housing Act Amendments of 1988 (FHAA). Provisions of the Amendments, which are designed to protect the rights of disabled individuals, have proven effective in many cases involving older persons. The 1988 Amendments prohibit discrimination against persons with disabilities in virtually all housing transactions, including sales or rentals. The protections are far reaching. Thus, among those home buyers and/or renters protected against the "refusal to make reasonable accommodation in rules, policies, practices or services, when accommodations may be necessary to afford such person[s] equal opportunity to use or enjoy a dwelling" are those elderly who, in fact, are disabled, as well as those who are unwittingly seen as disabled. Additional safeguards related to state and local zoning, land use and health and safety regulations are applicable to elderly persons with disabilities under other provisions of the FHAA. However, the Amendments are neither a guarantee of effective intervention, nor are they the solution to many practical problems facing the elderly.

Many service providers will readily acknowledge that the appearance of an older person making application for subsidized housing is a signal that something is amiss. Furthermore, it is at this point that intervention in the form of relief or assistance is most critical. This sub-priority area calls for grant proposals that demonstrate effective and timely strategies/approaches for formulating or implementing laws, regulations, and programs that:

(A) Prevent or delay the foreclosure on housing owned and occupied by older individuals or the eviction of older individuals from housing the individuals rent;

(B) Assist older individuals to obtain alternative housing as a result of such foreclosure or eviction;

(C) Assist older individuals to understand the rights and obligations of individuals (including lessor and lessee) under laws relating to housing ownership and occupancy; and

(D) Address the effects of land use/zoning restrictions, as well as escalating property values and the resulting property tax increases, on the housing options of older persons.

The applicant should focus, in particular, on models for:

(1) Assisting older individuals who are incapable of, or have difficulty in, understanding the circumstances and consequences of foreclosure on, or eviction from, housing occupied by that individual; and

(2) Coordinating the program proposed in the application submitted under this priority area with the activities of:

(a) The State Housing Ombudsman Program, where such a program exists, or where such a program is proposed;

(b) Tenant (and community) organizations;

(c) Mediation organizations for landlord-tenant concerns;

(d) Entities that provide public or other subsidized housing; and

(e) Area Agencies on Aging.

This coordination should facilitate the most effective assistance or referral to services for relocating or preventing the eviction of older individuals from housing they occupy.

Applications are invited from State Housing Agencies, State Agencies on Aging, State Housing Ombudsman programs and State legal assistance development programs as described in chapters 2 and 4 of subtitle A of Title VII of the Older Americans Act.

Applications must include the following:

(1) An acceptable plan for the involvement, in the demonstration program, of the Department of Housing and Urban Development, the Farmers Home Administration, and other agencies through which services are provided, or which are involved in publicly assisted housing programs;

(2) If submitted by an entity other than the State Agency on Aging, an endorsement of the program by that agency and assurances that the State will work together with the area agency on aging; and

(3) A commitment assuring that an evaluation of the effectiveness of the model Foreclosure and Eviction Assistance and Relief Services Demonstration Project will be conducted and a report presenting the findings of the evaluation shall be submitted to AoA not later than 3 months after the end of the project.

AoA intends to make approximately five (5) awards under this sub-priority area, with an approximate Federal share of $75,000 each year for project periods of two (2) years in duration.

*3.4 Statewide Legal Hotlines for Older Americans*

Under this priority area, consistent with Section 424(a)(2) of the Older Americans Act which provides for the support of "demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs," AoA is inviting applications from public and/or non-profit organizations currently engaged in the provision of legal services to the elderly, to develop and establish Statewide Legal Hotlines for older Americans. Background material on the current program of Statewide Legal Hotlines is presented below, followed by a description of the objectives, structure, and tasks to be carried out by projects proposed for funding under this priority area.

In 1985, after a prototype Statewide Legal Hotline in Pennsylvania showed considerable promise, the Administration on Aging (AoA) funded the American Association of Retired Persons/Legal Counsel for the Elderly (AARP/LCE) to further develop and test this innovative method of delivering a high volume of quality legal assistance to older people. A Legal Hotline utilizing paid, specially-trained, and experienced lawyers was developed to provide unlimited free legal advice to all State residents age 60 and older, regardless of their level of income or resources. The Hotlines also provided legal briefs and related assistance such as document reviews and calls/letters to third parties, but only when there was a likelihood that this would resolve the problem. Services were provided statewide by means of toll-free telephone lines. The Legal Hotlines was fully computerized, therefore minimizing, if not eliminating, the need for paper, files, and administrative staff.

The Legal Hotline concept took hold in the ensuing years. Statewide hotlines have been established in the District of Columbia, Texas, Florida, Michigan, Ohio, Maine, New Mexico and Arizona. An evaluation after four years of legal hotline operation showed that Legal Hotlines and corresponding referral service resolved 81% of callers legal questions and 50% of their legal problems. However, a national survey showed that as many as two million older households may still have an unmet legal need each year. The expansion of Legal Hotlines would make legal assistance available to many of these older people.

*3.4.1 State Legal Hotline Projects*

Applications to develop and operate Legal Hotlines submitted under this priority area should be modeled after previously funded AoA Legal Hotlines. It is the applicant's responsibility to review and adapt the program experience in those States and the District of Columbia to the resources, needs, and realities of their State. Applicants should recognize and reflect in their project plan that considerable time is needed to cement the range of endorsements and agreements, and to develop other resources, essential to both the developmental and the operational phases of the Legal Hotlines project. The applicant is expected to submit a fully developed Legal Hotlines program application, including solid commitments from the appropriate participating organizations and individuals.

Based upon the experience to date, certain elements are essential to the successful establishment and effective operation of a Statewide Legal Hotline to serve older persons. The applicant must address, at a minimum, these elements:

I. Staffing.

A. A full time managing attorney;

B. The equivalent of two additional full-time attorneys to take calls and respond directly to older persons in need of assistance; and

C. Staff persons to answer the phones when the attorneys are busy.

II. Telephones.

A. Two incoming toll-free lines, and one outgoing WATTS line.

B. Experience has shown that the total telephone budget will be a minimum of $20,000–$25,000 per year after the Legal Hotline is operational.

III. Computer equipment.

A. An allocation of approximately $20,000 for computer equipment.

B. Legal Hotline software (included in the above mentioned $20,000) can be researched through the American Association of Retired Persons/Legal Counsel for the Elderly (AARP/LCE).

IV. Reduced attorneys fees.

A commitment to recruit a statewide panel of attorneys in private practice willing to accept significantly reduced hourly rates as well as fee caps on common services such as $45–$50 for a simple will.

V. Training program.

Develop and provide a training program for the Legal Hotlines attorneys and modify reference materials used in other Legal Hotlines to conform with your State law.

In approving applications for funding, the Assistant Secretary for Aging will pay particular attention to those which focus on providing services (1) to ethnic and/or racial minority older persons and (2) to those elderly in greatest economic and social need. Applications meeting the following criteria will receive preference:

A. Applications from States which rank in the top third of all States in either (1) population age 60 and above, or (2) percentage of elderly population whose income is less than 125% of the poverty line, or (3) percentage of elderly population comprised of minority elderly (African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans).

B. Applications that show plans for special outreach activities to low income and minority older populations;

C. Applications which demonstrate the ability to deliver services to the non-English speaking population;

D. Applications which demonstrate that Title III/VII and Legal Services Corporation funded legal services

programs within the State are willing to coordinate their services with the proposed Legal Hotline;

E. Applications that offer the largest grantee cost sharing, and thus request the fewest AoA dollars. (The minimum grantee share of project costs is 25%);

F. Applications which offer a practical plan for funding the Legal Hotline once the AoA grant ends.

*Endorsements:* Applications should include the endorsement of the State Agency on Aging and the State Bar Association, the voluntary and/or mandatory Bar, whichever is appropriate. Special justification must be provided by the applicant if these endorsements are not included in the application.

*Geographic Coverage:* It is highly unlikely that a single Legal Hotline would be adequate in responding to the unique size and diversity of the older population in California and New York. Therefore, AoA will consider applications for a Legal Hotline which serves Northern California or Southern California, but not both areas. Similarly, AoA will consider applications which serve either (1) New York City, Nassau, and Suffolk Counties or (2) the rest of New York State, but not both areas. No other exceptions will be made to the requirement that Legal Hotlines serve the entire State.

AoA expects to fund two (2) to three (3) State Legal Hotlines under this priority area. The Federal share for the projects will be approximately $100,000 per year for an expected project period of three (3) years.

*3.4.2 Technical Assistance Project for Statewide Legal Hotlines*

AoA also intends to award a project grant under this priority area which will provide technical assistance, training, and capacity-building services to the new Statewide Legal Hotline projects. Applicants for the training, technical assistance, and capacity-building grant must demonstrate experience and understanding of the operations of Statewide Legal Hotline projects. The applicant is expected to design a detailed plan for providing advice, guidance, and assistance to the State Legal Hotline projects through their development and operational phases, and their transitional phase to self-support at the conclusion of AoA funding.

The applicant should plan on assisting three (3) new Statewide Legal Hotline projects, including a minimum of one (1) site visit per project and a minimum of two (2) teleconferences with project directors in each funding period. The applicant should also schedule one (1) two-day cluster meeting with project directors within the first three (3) months of each budget period for orientation, information sharing, training, and discussion of documentation and reporting. The winning applicant will be required to prepare year-end reports and a final report which describe the progress, status, and accomplishments of the projects in building and conducting the Statewide Legal Hotlines, and include a detailed summation of efforts to generate funding to sustain the Hotlines after AoA funding ends.

It is anticipated that the Federal share for this technical assistance, training, and capacity-building project will be approximately $100,000 per year for an expected project period of three (3) years.

*3.5 Minority Management Training Program Projects*

Under this priority area, pursuant to Section 401 of the Older Americans Act, the Administration on Aging (AoA) plans to fund a Minority Management Training Program comprised of special training projects that increase the number of qualified individuals from the four racial and ethnic minority populations, African-Americans, Hispanics, Pacific/Asians, and Native Americans, in key management and/or administrative positions in State and Area Agencies on Aging, and other agencies and organizations which impact on older persons, especially those who are at-risk of losing their independence. Project proposals are solicited from State and Area Agencies on Aging, Indian Tribal Organizations funded under Title VI of the Older Americans Act, educational institutions and other public and nonprofit organizations. Proposals should include the endorsement of the appropriate State Agency on Aging and other participating agencies, organizations and institutions.

The Program goal is to increase the professional credentials and experiences of project trainees by helping them to make the transition from staff level positions to managerial and/or administrative positions. Preferred trainees targetted are highly motivated minority professionals and paraprofessionals, who have bachelor's and/or advanced degrees and/or several years of significant aging program experiences. Participating program host agencies provide managerial or administrative trainee positions in their work settings. Results expected during and/or upon completion of the training experience, are that the trainees are either employed in permanent positions as a manager, supervisor or administrator in the host agency; or the trainees are highly qualified and referred to other appropriate aging related agencies, institutions or organizations having comparable position vacancies, by the project grantee. Trainee selection and placement is based upon a strong commitment to work in the field of aging.

Applicants should seek commitments from host agencies that are willing to provide a specified, varied work experience with ample opportunities for the trainees to assume managerial and/or administrative roles. Trainee sponsorship and placements are strongly encouraged in State and Area Agencies on Aging. Trainees should be given on-the-job instruction, support, counseling, and feedback about the work performance. The project grantee must provide administrative support to trainees and host institutions, on-site monitoring of the work experiences on a periodic basis, and assistance in the placement of trainees when the training experience is completed.

Project applications should include information about the project grantee, host agencies, procedures for recruiting and selecting trainees, description of the traineeship and work experiences, and required supervisory associations. Applicants must include (1) a plan for assuring placement of trainees in a management or administrative position in an organization that serves older persons, upon completion of the training program and (2) an evaluation component for tracking the progress of the trainees' advancement to management positions and in carrying out their managerial responsibilities. Stipends provided under this priority area are expected to be commensurate with the cost of living in a particular geographic area and the qualifications and experience of a particular trainee. Applicants should endeavor to obtain other financial support for the trainee program. Host agency cost sharing is strongly encouraged.

AoA expects to fund approximately five projects under this priority area with a Federal share of approximately $100,000 per project per year, and an estimated project duration of approximately two (2) years.

Part III. Information and Guidelines for the Application Process and Review

Part III of this Announcement contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along

with detailed instructions for developing and assembling the application package for submittal to the Administration on Aging (AoA). General guidelines on applicant eligibility were provided in Part I. Specific eligibility guidelines were provided in Part II under certain priority areas.

*A. General Information*

*1. Review Process and Considerations for Funding*

Within the limits of available Federal funds, AoA makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this Announcement. The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening:* To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in Section D below, *will not* be reviewed and will receive *no* further consideration for funding.

c. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section F, below. This independent review of applications is performed by panels consisting of qualified persons from outside the Federal government and knowledgeable non-AoA Federal government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments:* AoA may solicit views and comments on pending applications from other Federal departments and agencies, State and Area Agencies on Aging, interested foundations, national organizations, experts, and others, for the consideration of the Assistant Secretary for Aging in making funding decisions.

e. *Other Considerations:* In making funding award decisions, the Assistant Secretary for Aging will pay particular attention, as appropriate, to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions will also reflect the equitable distribution of assistance among geographical areas of the nation, and among rural and urban areas. The Assistant Secretary for Aging also guards against wasteful duplication of effort in making funding decisions.

f. *Other Funding Sources:* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. *Decision-Making Process:* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

h. *Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be several months in duration. This length of time is required to review and process grant applications.

*2. Notification Under Executive Order 12372*

This is not a covered program under Executive Order 12372.

*B. Deadline for Submission of Applications*

The closing date for submission of applications under Section A priority areas is *July 19, 1993.* The closing date for submission of applications under Section B priority areas is *September 10, 1993.* Applications must be either sent or hand-delivered to the address specified in Section D, below. Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will meet the deadline if it is either:

1. Received at the mailing address on or before the applicable deadline date; or

2. Sent before midnight of the applicable deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the applicable deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the applicable deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadlines are considered late applications. The Office of Administration and Management will notify each late applicant that its application will not be considered under the applicable grant review competition.

AoA may extend either the *July 19, 1993* or the *September 10, 1993* deadline for applications because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail, or when AoA determines an extension to be in the best interest of the government. However, if AoA does not extend either deadline for all interested applicants, it may not waive or extend the deadline for any applicant(s).

*C. Grantee Share of the Project*

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Successful applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share must equal at least 25% of the total project cost. Applicants should note that, among applications of comparable technical merit, the greater the non-Federal share the more favorably the application is likely to be considered.

The one exception to this cost sharing formula is for applications from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95–134, as amended, which requires the Department to waive "any requirement for local matching funds under $200,000."

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred *direct or indirect* costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under Federal rules established, as appropriate, by OMB Circulars A–21, A–87, and A–122. If the required non-Federal share is not met by a funded project, AoA will disallow any unmatched Federal dollars. A common error is to match 25% of the Federal share rather than 25% of the entire project cost.

*D. Application Screening Requirements*

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will *not* be reviewed and will receive *no* further consideration for funding.

Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must *not* exceed forty (40) pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

The following documents are excluded from the 40 page limitation: (1) Standard Forms (SF) 424, 424A (including up to a four page budget justification) and 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status; and (4) indirect cost agreements. Within the forty (40) page limitation, the following guidelines are suggested:

—Summary description (one page);
—Narrative (approximately twenty-five to thirty pages);
—Applicant's capability statement, including an organization chart, and vitae for key project personnel (approximately five to ten pages) and;
—Letters of commitment and cooperation (approximately four pages).

2. Applications submitted under Section A priority areas must be either postmarked by midnight, *July 19, 1993,* or hand-delivered by 5:30 p.m., Eastern Time, on *July 19, 1993* to the address provided below. Applications submitted under Section B priority areas must be either postmarked by midnight, *September 10, 1993,* or hand-delivered by 5:30 p.m., Eastern Time, on *September 10, 1993* to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–93–1.

3. Applicants must meet any eligibility requirements specific to the priority area under which they have submitted their application. (For everyone's benefit, please be sure that the priority area has been clearly identified in the application).

UNDER NO CIRCUMSTANCES WILL APPLICATIONS THAT DO NOT MEET THESE SCREENING REQUIREMENTS BE ASSIGNED TO REVIEWERS.

*E. Funding Limitations on Indirect Costs*

1. Training projects awards to institutions of higher education and other non-profit institutions are limited to a Federal reimbursement rate for indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. Differences between the applicant's approved rate and the 8% limitation may be used as Federal cost sharing. See Section J–2, Item 6j, below.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. Applicants who do not have a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and in compliance with relevant OMB Circulars.

*F. Evaluation Criteria*

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations set forth in the individual priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance: 20 points

a. Does the application pinpoint relevant economic, social, financial, institutional or other problems requiring a solution?

b. Is the need for the proposed project clearly demonstrated and supported by documentation? Are the needs of low income and minority elderly appropriately discussed?

c. Are the principal and subordinate objectives and activities of the project clearly stated, justified, innovative (as appropriate), and relevant to the issue/priority area?

d. Does the application include relevant and significant data in providing a thorough discussion of the current state of knowledge relevant to the proposed project?

2. Expected Results and/or Benefits—Dissemination and Utilization: 30 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are important anticipated contributions to policy, practice, theory and/or research clearly indicated? Does the application specify how the expected results will directly and tangibly benefit older people?

b. Does the application provide a realistic and appropriate plan of activities for disseminating at propitious times the results, findings, and products of the project. Does the application describe how its products will be disseminated to well-chosen audiences as well as what uses those audiences are likely to make of the project's findings, results, and products?

3. Approach: 30 points

a. Does the application provide a sound and workable plan of action pertaining to the scope of the project and specify how the proposed work will be accomplished?

b. Are persuasive reasons offered for taking the proposed approach as opposed to others? Does the application clearly explain the methodology for determining if the results and benefits identified are being achieved?

c. Has the application clearly identified the kinds of data to be collected and analyzed, and included an evaluation component which identifies and discusses appropriate criteria for assessing the performance and results of the project?

d. Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be achieved? Is a time-line chart or its equivalent employed to list project activities in chronological order and show the target dates for the projected accomplishments?

e. Has the application identified and secured the commitment of each of the key cooperating organizations, groups, and individuals who will work on the project and provided an adequate description of the nature of their effort or contribution?

4. Level of Effort: 20 points

a. Are the project management, staff resources and time commitments adequate to carry out the proposal effectively and efficiently? Is the staff chart consistent with the project plan expressed in the Approach section of the Program Narrative?

b. Are the key staff well qualified for this project? Are consultants and advisers used appropriately? If volunteers will be used, is there adequate supervision and support from project staff?

c. Does the budget justification adequately describe the resources necessary to conduct the project? Is the budget reasonable in terms of the intended results?

d. Are the authors of the proposal, their relationship with the applicant

agency and their intended role in the project, if any, identified?

*G. The Components of an Application*

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements. *Note*: The original copy of the application *must* have an original signature in item 18d on the SF 424.
- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Project summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letters of Commitment and Cooperation;
- A copy of the *Check List of Application Requirements* (See Section K, below) with all the completed items checked.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be numbered sequentially. In order to facilitate the handling and reproduction of the application for purposes of the review, *please do not use covers, binders or tabs.* Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

*H. Communications With AoA*

*Do not* include a self-addressed, stamped acknowledgment card. All applicants will be notified by mail of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Office of Program Development by telephone at (202) 619–0441.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

*I. Background Information and Guidance for Preparing the Application*

*1. Current Projects and Previous Project Results*

In the Program Narrative of the application (see Section J–6 below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on *Current AoA Projects* may be obtained by contacting the Office of Program Development at 202/619–0441. Regarding *Completed AoA Projects*, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Eldercare Dissemination Center; the National Technical Information Service (NTIS), a clearinghouse and document source for Federally sponsored reports; Ageline Database, a bibliographic database service sponsored by the American Association of Retired Persons, available online through BRS and DIALOG; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers: (1) National Eldercare Dissemination Center, National Association of State Units on Aging, 1225 I Street, NW., suite 725, Washington, DC 20005, (202) 898–2578.

The Center maintains a computerized database of descriptions of recent AoA grant products including reports, studies, training materials, technical assistance documents, and audio-visual products. Staff are available to scan the database for products and tailored printouts may be requested. The Center has also established a product repository of over 900 products generated under Title IV grants. The repository serves as a backup source for original documents from which duplicates can be produced when copies are no longer available from the grantees. Information about products and searches of this database can be requested by telephone (800–989–6537) and by written request. In addition, in June, 1993, it will also be available via modem for on-line searches (800–989–2243).

(2) National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4600.

(3) Ageline Database

(a) BRS Customer Service, 8000 Westpark Drive, McLean, VA 22102, (800) 345–4BRS.

(b) DIALOG Customer Service, 3460 Hillview Avenue, Palo Alto, CA 94304, (800) 3DIALOG, (415) 858–2700 (in California).

(4) U.S. Government Printing Office, Acquisition Unit, Library Programs Service, North Capitol and H Streets NW., Washington, DC 20401, (202) 275–1070.

*2. Dissemination and Utilization*

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- The most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- Dissemination starts at the beginning of a project not when it is completed;
- Potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- Dissemination is a networking process;
- At a minimum, dissemination includes getting your final products into the hands of appropriate users and making presentations at conferences; and
- Coordination with other related projects may increase the chances of your products being used.

*J. Completing the Application*

In completing the application, please recognize that the set of standardized

forms and instructions is prescribed by the Office of Management and Budget (approved under OMB control number 0348–0043) and is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. First-time applicants, in particular, may have some misgivings that they have not crossed the final t or dotted the last i of their application. Any applicant should, of course, take reasonable care to avoid technical errors in completing the application, but the substantive merits of the project proposal are the determining factors. In these instructions, we offer several pointers aimed at clarifying matters, overcoming difficulties, and preventing the more common technical mistakes made by applicants. If the need arises, please call (202) 619–0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this Federal Register announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the Federal Register announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of completed forms have been provided as part of this announcement. These samples are to be used as a guide only. Be sure to submit your application on the blank copies. Please prepare your application consistent with the following guidance:

1. *SF 424, Cover Page:* Complete only the items specified in the following instructions:

*Top Left of Page.* In the box provided, enter the number of the priority area under which the application is being submitted.

*Item 1.* Preprinted on the form.

*Item 2.* Fill in the date you submitted the application. Leave the applicant identifier box blank.

*Item 3.* Not applicable.

*Item 4.* Leave blank.

*Item 5.* Provide the legal name of applicant; the name of the primary organizational unit which will undertake the assistance activity; the applicant address; and the name and telephone number of the person to contact on matters related to this application.

*Item 6.* Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

*Item 7.* Enter the appropriate letter in the box provided.

*Item 8.* Preprinted on form.

*Item 9.* Preprinted on form.

*Item 10.* Preprinted on form.

*Item 11.* The title should describe concisely the nature of the project. Avoid repeating the title of the priority area or the name of the applicant. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

*Item 12.* Preprinted on form.

*Item 13.* Enter the desired start date for the project, beginning on or after September 1, 1993 and the desired end date for the project. Projects may be from 12 to 48 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

*Item 14.* List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

*Item 15.* All budget information entered under item #15 should cover: (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months. The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b–15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c–15e, as applicable. It is important that the dollar amounts entered in sub-items 15b–15e total at least 25 percent of the total project cost (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

*Check:* Please check item 15 to make sure you have presented budget amounts only for the first year if you are proposing a multi-year project. A common error is to present budget totals for a full project period of 24, or 36, or 48 months in item 15.

*Item 16.* Preprinted on form.

*Item 17.* This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

*Item 18.* To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

*2. SF 424A—Budget Information*

This form (SF424A) is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item columns/blocks are superfluous and should be regarded as not applicable. The applicant should consider and respond to only the budget items for which guidance is provided below. Section A—Budget Summary and Section B—Budget Categories should include both Federal and non-Federal funding for the proposed project covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months.

*Section A—Budget Summary*

On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

*Section B—Budget Categories*

Use only the last column under Section B, namely the column headed Total (5), to enter the total requirements for funds (combining both the Federal and non-Federal shares) by object class category.

A separate *budget justification* should be included which shows the breakdown of budget cost items by Federal and non-Federal shares and fully explains and justifies each of the major budget items, personnel, travel, other, etc., as outlined below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

*Line 6a—Personnel:* Enter total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

*Justification:* Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

*Line 6b—Fringe Benefits:* Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Line 6c—Travel:* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

*Justification:* Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Line 6d—Equipment:* Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment is $500 or more per unit.

*Justification:* Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

*Line 6e—Supplies:* Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

*Line 6f—Contractual:* Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

*Justification:* Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate a substantial part (one-third, or more) of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

*Line 6g—Construction:* Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

*Line 6h—Other:* Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

*Line 6i—Total Direct Charges:* Show the totals of Lines 6a through 6h.

*Line 6j—Indirect Charges:* Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) The applicant is a State or local government agency.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in 45 CFR part 74), Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, stipends, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the Federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

*Line 6k—Total:* Enter the total amounts of Lines 6i and 6j.

*Line 7—Program Income:* Estimate the amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and expected use of income in the Level of Effort section of the Program Narrative.

*Section C—Non-Federal Resources*

*Line 12—Totals:* Enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs: Not applicable.

*Section E—Budget Estimate of Federal Funds Needed for Balance of the Project*

This section should be completed only if the total project period exceeds 17 months.

*Line 20—Totals:* Enter the estimated required *Federal* funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and, if applicable, for months 25 through 36 under "(c) Second," for months 3748 under "(d) Third."

*Section F—Other Budget Information*

*Line 21—Direct Charges:* Not applicable.

*Line 22—Indirect Charges:* Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

*Line 23—Remarks:* Provide any other explanations or comments deemed necessary.

*3. SF 424B—Assurances*

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041.

*4. Certification Forms*

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

*5. Project Summary Description*

On a separate page, provide a project summary description headed by two identifiers: (1) The name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project "abstract" which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

*6. Program Narrative*

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the priority area under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in Section F above. The format of the narrative should, in fact, parallel the criteria, beginning with an integrated discussion of (A) the project's objectives, relevance, and significance, which provide the framework for a discussion and justification of (B) the results/benefits that you expect the project to accomplish. The next section of the narrative follows with a detailed explanation of (C) the approach(es) the project will undertake to achieve its objectives; and the narrative concludes with (D) the level of effort needed to carry out the project, in terms of staff, funding, and other resources.

Please have the narrative typed on one side of 8 1/2" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should also identify the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

This narrative guidance is in accordance with that provided in OMB Circular A–102. The checklist reporting form (Section K, below) is consistent with that approved under OMB control number 0937–0189.

*7. Organizational Capability Statement and Vitae for Key Project Personnel*

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its record for preparing cogent and useful reports, publications, and other products. An organization chart showing the relationship of the project to the current organization should be included. Vitae should be included for key project staff only.

*K. Checklist for a Complete Application*

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It will help in properly preparing your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

____One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
____SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;
____SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
____The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;
____As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;
____Proof of nonprofit status, as necessary;
____Summary description;
____Program narrative;
____Organizational capability statement and vitae for key personnel;
____Letters of commitment and cooperation, as appropriate.

*L. Points to Remember*

1. There is a forty (40) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. Indicate the priority area in the box at the top left hand corner of the SF 424.

4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

5. To meet the cost sharing requirement (see Section C above), you must, at a minimum, match $1 for every $3 requested in Federal funding to reach 25% of the *total* project cost (except for Priority Area 1.4 which requires, at a minimum, a grantee share of 50% of total project costs). For example, if your request for Federal funds is $90,000, then the required minimum match or cost sharing is $30,000. The total project cost is $120,000, of which your $30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

8. Do *not* include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one project application is submitted, each should be submitted under separate cover.

11. Before submitting the application, have someone other than the author(s): (1) Apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of

the trial run and then make whatever changes you deem appropriate.

12. Applications submitted under Section A priority areas must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on *July 19, 1993* to the address below. Applications submitted under Section B priority areas must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on *September 10, 1993* to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., room 4644, Washington, DC 20201, Attn: AoA–93–1.

**Fernando Torres-Gil,**

*Assistant Secretary for Aging.*

BILLING CODE 4130-02-U

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | | |
|---|---|---|
| | 2. DATE SUBMITTED | Applicant Identifier |
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 3. DATE RECEIVED BY STATE: Not Applicable (N.A.) | State Application Identifier: N.A. |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name | Organizational Unit |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.048

TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

Nation-wide Applicability

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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OMB Approval No. 0348-0044

## BUDGET INFORMATION — Non-Construction Programs

### SECTION A – BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | 93.048 | $ | $ | $ | $ | $ |

### SECTION B – BUDGET CATEGORIES

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7 Program Income | $ | $ | $ | $ | $ |

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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|
| 23. Remarks | |

SF 424A (4-88) Page 2
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OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE** 4.3.2

| | |
|---|---|
| 2. DATE SUBMITTED: July 12, 1993 | Applicant Identifier |
| 3. DATE RECEIVED BY STATE: Not Applicable (N.A.) | State Application Identifier: N.A. |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: ABC Organization

Organizational Unit: Division on Aging

Address (give city, county, state, and zip code):
9876 Marcus Avenue
Middletown, Kansas 12345

Name and telephone number of the person to be contacted on matters involving this application (give area code):
William White
(678) 901-2345

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 67-8901234

7. TYPE OF APPLICANT: (enter appropriate letter in box) N
A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify): Non-profit Agency

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY:
Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.048
TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Improved Home and Community Based Care

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):
Nation-wide Applicability

13. PROPOSED PROJECT: Start Date 09/01/93; Ending Date 08/31/95

14. CONGRESSIONAL DISTRICTS OF: a Applicant; b Project 2-4

15. ESTIMATED FUNDING:

| | |
|---|---|
| a Federal | $ 75,000.00 |
| b Applicant | $ 25,000.00 |
| c State | $ .00 |
| d Local | $ .00 |
| e Other | $ .00 |
| f Program Income | $ .00 |
| g TOTAL | $ 100,000.00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a Typed Name of Authorized Representative: Jane Green | b Title: Executive Director | c Telephone number: (567) 890-1234 |
| d Signature of Authorized Representative | | e Date Signed: July 8, 1993 |

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## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1 | | $ | $ | $ | $ | $ |
| 2 | | | | | | |
| 3 | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | 93.048 | $ | $ | $ 75,000 | $ 25,000 | $ 100,000 |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ 50,000 |
| b. Fringe Benefits | | | | | 15,000 |
| c. Travel | | | | | 4,000 |
| d. Equipment | | | | | 1,000 |
| e. Supplies | | | | | 2,000 |
| f. Contractual | | | | | 4,000 |
| g. Construction | | | | | N.A. |
| h. Other | | | | | 9,000 |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | 85,000 |
| j. Indirect Charges | | | | | 15,000 |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ 100,000 |
| 7 Program Income | $ | $ | $ | $ | $ |



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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ 25,000 | $ | $ | $ 25,000 |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ 100,000 | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|

23. Remarks

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SAMPLE

**Assurances—Non-Construction Programs**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through and authorized representative, access to any the right to examine all records, books, papers or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (43 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act 40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistence with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting component or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

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Signature of Authorized Certifying Official

Title ———————————

Applicant Organization _____
Date Submitted _____

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal Appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or a Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbing," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the requested certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization _____

Authorized Signature _____
Title _____
Date _____

Note: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, SW., room 4644-COHEN; Washington, D.C. 20201-0001

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)*

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**U.S. Department of Health and Human Services**

*Certification Regarding Drug-Free Workplace Requirements, Grantees Other Than Individuals*

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take a action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignifiant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

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Place of Performance (Street address, City, County, State, ZIP Code)

Check [ ] if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue SW., Washington, DC 20201.

Signature _____

Date _____

Title _____

Organization _____

[FR Doc. 93–11696 Filed 5–18–93; 8:45 am]

BILLING CODE 4130–02–U

federal register

Wednesday
May 19, 1993

Part III

# Environmental Protection Agency

40 CFR Part 63
Approval of State Programs and Delegation of Federal Authorities; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[AD–FRL–4652–7]**

## Approval of State Programs and Delegation of Federal Authorities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing regulations to provide guidance, relating to approval of State programs, that EPA is required to publish under section 112(1) of the Clean Air Act Amendments (CAA) of 1990. Section 112(1)(2) of the CAA requires EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP's) and guidance concerning requirements for the prevention and mitigation of accidental releases of toxic substances into the ambient air. This proposed rule contains guidance specifically relating to the approval of rules or programs that States can implement and enforce in place of certain Federal section 112 rules, and the partial or complete delegation of Federal authorities and responsibilities associated therewith. Submission of such rules or programs by the States is entirely voluntary.

Once granted approval, State rules and 40 CFR part 70 operating permit conditions resulting from approved State programs would be Federally enforceable and replace the otherwise applicable Federal requirements within a State or local jurisdiction.

This proposed rule also establishes guidance for States regarding the implementation and enforcement of section 112(r), including the registration of facilities subject to these requirements.

Guidance to review high-risk point sources; to establish and to maintain various technical assistance activities, including an air toxics clearinghouse; and to establish a grant mechanism for the purpose of assisting States in developing and implementing air toxics programs as well as further program specific guidance on the development of State accidental release prevention programs will be addressed in the future.

Only States seeking to implement and enforce some provisions of their own air toxics programs in lieu of rules resulting from the Federal program under section 112 need to obtain approval under this proposed rule.

**DATES:** *Comments.* Comments must be received on or before June 18, 1993.

*Public Hearing.* Requests for a public hearing must be received by June 2, 1993.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), ATTN: Docket No. A–92–46, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*Public Hearing:* If a public hearing is held, it will be at 9 a.m. (call the number below for the date) at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pam Smith, Pollutant Assessment Branch, Emission Standards Division, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD–13), Research Triangle Park, North Carolina 27711, telephone (919) 541–5319.

*Docket.* The docket listed above under **ADDRESSES** contain supporting information used in developing the proposed rule. The docket is available for public inspection and copying from 8:30 a.m.–12 p.m. and 1:30 p.m.–3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For general information on the proposed rule, contact Tim Ream, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 or contact Sheila Q. Milliken, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2625.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:



### I. Background and Purpose

Many States have developed or are developing air toxics programs under State authorities. The Congress was very much aware of the States' air toxics programs in the course of developing the CAA. (*See, e.g.* S. Rep. No. 228, 101st Cong. 1st Sess. 192 (1989).) These programs, developed to address specific State needs, may differ widely from Federal rules being developed by EPA under section 112 of the CAA for the control of emissions of HAP's. Existing State programs may result in controls that are more stringent than, equivalent to, or less stringent than controls resulting from corresponding Federal standards.

From discussions with States and other interested parties concerning approval of State programs under section 112(l), EPA has learned that some States want to continue to implement and enforce the requirements of their own air toxics programs despite the CAA requirements under section 112 relating to air toxics. The prospect of simultaneous implementation and enforcement of both Federal and State air toxics programs in some States has caused concerns to be expressed regarding the possible effects on the States and the regulated community. A primary concern stems from what could be called "dual regulation", a situation in which sources are subject to differing State and Federal program requirements. Dual regulation may burden regulated sources and permitting and enforcement agencies for several reasons. First, permits resulting from dual regulation are necessarily longer and more expensive to develop and approve due to the need to specify separate sets of operating conditions derived from both Federal and State regulations. Second, compliance and enforcement costs may be greater because of two sets of conditions that must be enforced. Third, and perhaps most critically, permit conditions that result from dual regulation may not always be complementary, and in some instances, may even be fundamentally inconsistent in instances where the Federal and State programs may require measures that are technically incompatible. In this latter instance it may be physically difficult or

impossible for a source to employ simultaneously the controls and/or work practices mandated by both Federal and State regulations.

To avoid dual regulation and the attendant complications, as well as to preserve the integrity of their own air toxics programs, some States have contended that section 112(l) of the CAA authorizes EPA to delegate authority to the States to implement and enforce their rules or programs in lieu of Federal rules under section 112. Many States have expressed this argument to EPA through a series of discussions and informal conversations prior to publication of today's proposal. Moreover, some States have contended that any rules or programs that are approved by EPA under the authority of section 112(l) should be Federally enforceable, which would result in reduced "potential to emit" of sources that have regulated emissions under State air programs. (Reducing a source's potential to emit, under section 112, has benefits that are discussed later in this section of today's notice).

The EPA agrees that section 112(l) authorizes EPA to delegate certain section 112 authorities to States. Today's proposed rule would offer guidance intended to assist States (and local agencies) in submitting rules and programs for approval by EPA. After approval by EPA, States may implement and enforce their rules and programs in place of certain Federal rules promulgated under section 112, with the approved rules and programs being Federally enforceable. Section 112(l) also provides that any delegation of EPA's authorities under today's proposed rule shall not include the authority to set standards or other emission limitations or requirements less stringent than those promulgated by EPA under the CAA. The regulation in today's notice, when promulgated, will fulfill the requirement for such guidance.

Today's proposed rule would provide potential benefits to sources of hazardous air pollutants and to permitting and enforcement agencies by addressing the dual regulation issue and related problems. This proposed rule seeks to achieve the goal of allowing EPA and the States to work together to minimize potential program redundancies and inconsistencies and to reduce the costs and time involved in permit review and issuance. In maximizing the efficiency of this process, savings are initially realized by Federal and State agencies, thereby reducing costs that might otherwise be borne by sources in the form of higher permit fees. The cost savings will be realized without sacrificing any environmental protection.

An additional significant benefit may accrue to some regulated sources from today's proposed rule. All sources of listed HAP's are defined under section 112(a) of the CAA as either "major" or "area." These definitions are based on a source's "potential to emit", which has been defined previously in EPA rules, including the 40 CFR part 70 operating permit program, as "the maximum capacity of a stationary source to emit any air pollutant under its physical or operational design" (see § 70.2). The part 70 definition goes on to say that "any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator." Although section 112 does not include a definition of "potential to emit," EPA plans to propose a definition that is consistent with the part 70 definition in the general provisions for part 63 (to be codified in subpart A). The implication of this definition is that the potential to emit of sources controlled by State regulations can be reduced only when the applicable State regulations are made Federally enforceable. Hence as State regulations become Federally enforceable, a substantial number of sources could shift from major source status to area source status, thereby possibly reducing these sources' cost of complying with the CAA. This cost reduction could be achieved without any decrease in emission reduction. Future EPA rulemakings may supplement the general provisions for section 112 rules by further clarifying how and when sources may limit their potential to emit HAP's below major source threshold levels. Given the opportunity available to sources under part 70 to limit their potential to emit, EPA is seeking comment on whether and how this subpart might further extend sources' opportunities to limit their potential to emit. EPA is also interested in comment on the extent to which the approach proposed here is consistent with the approach adopted in part 70.

## II. Summary of Proposed Rule

Today's proposed regulations would establish guidance for EPA approval of State (or local, Tribal or Territorial) air toxics control rules (i.e., promulgated regulations) or programs (i.e., any collection of statutory, regulatory or policy requirements) that are at least as stringent as otherwise applicable Federal section 112 rules. No revision to the State's rule or program is federally approved and enforceable unless and until it is approved by EPA through the full 112(l) process. After approval, State rules and operating requirements incorporated in a part 70 permit that result from approved State programs would be Federally enforceable and substitute for the otherwise applicable Federal requirements in that State or local jurisdiction.

Agencies with approved 40 CFR part 70 operating permit programs have the responsibility to begin immediately the implementation and enforcement of all applicable section 112 rules. Authorities granted along with part 70 program approval will not allow for the permitting agency to implement and enforce a State rule or program that differs in any respect from an existing Federal rule.

To gain EPA approval of a State rule or program under today's proposed rule, certain approval criteria must be met. These criteria require that a submission for approval of a rule or program must demonstrate adequate authority adequate resources, an expeditious implementation schedule and an adequate enforcement strategy, and that the approved rule or program is likely to satisfy, in whole or in part, the objectives of the Act. In addition, one of three sets of specific criteria must be met. The three sets of specific criteria correspond to three options for requesting approval of such rules or programs: approval of a state rule that adjusts a section 112 rule, approval of a State rule that substitutes for a section 112 rule, and approval of State program which substitutes for some or all section 112 emission standards or requirements.

Under the first of these three options, a State rule could be approved that is structurally very similar to, but is at least as stringent as, a Federal rule. The State rule must have undergone State notice and public comment before submission for Federal approval. Under this option, each adjustment to the Federal rule must be shown to result in emission limits and other requirements that are clearly no less stringent than would have resulted from the otherwise applicable Federal rule. There can be no ambiguity regarding the stringency of any of the proposed adjustments. If EPA finds that the necessary criteria are met, the State rule with adjustments becomes Federally enforceable in lieu of the otherwise applicable section 112 rule.

Under the second option, approval of a State rule that substitutes for a section 112 rule would be necessary when a State rule differs structurally from the

applicable Federal section 112 rule or when a State rule differs in ways that would not be considered unambigously no less stringent. This could be the case when a State submits a rule written independently of a Federal rule or when, for example, a State rule achieves equivalent emission reductions but with a different combination of levels of control and compliance and enforcement measures not allowed otherwise in the Federal rule. Under today's proposed rule, a State must make a detailed demonstration that the State rule results in equal or greater emission reductions (or other measure of stringency where appropriate) for each individual source affected by the Federal section 112 rule. If EPA finds that the demonstration is satisfactory, subpart A would be amended to incorporate the approved State rule. The approved State rule would be Federally enforceable and replace the otherwise applicable Federal rule in the relevant State or local jurisdiction. Approval of a State rule which substitutes for the section 112(r) rule must ensure that the information required for facility registration, submission of the risk management plan, and the auditing strategy are all consistent with requirements in 40 CFR part 68.

The third option is for approval of a State program that substitutes for some or all section 12 emission standards. Under this option, a State program may be approved only for implementation and enforcement in place of implementation and enforcement of specific standards and requirements established under sections 112(d), (f), or (h). For approval to implement and enforce the State program in place of otherwise applicable Federal section 112 emission standards, a State must make a number of legally-binding commitments. First, the State must commit to regulating every source that would have been regulated by the Federal section 112 emission standards for which the State program is intended to substitute. Second, the State must provide assurance that the level of control and compliance and enforcement measures in each 40 CFR part 70 permit for these sources are at least as stringent as those that would have resulted from the otherwise applicable Federal emission standards. Finally, the State must commit to expressing the 40 CFR part 70 operating permit conditions in the form of the otherwise applicable Federal standard. This means that the State must commit to translating its standards from the State form to the Federal form so that permitted operating conditions are expressed in the same units of measure and include the same or otherwise Federally recognized monitoring and test procedures for that as the Federal rule. This means that monitoring and testing methods which have been approved by EPA for the pollutant and source category can be used. If approval of the State program is granted, EPA would then promulgate a rule amending subpart A to incorporate the State program.

A State may use any one or any combination of these options in its request for approval of State rules or programs. (A State need not employ any of these options if it is accepting delegation of all Federal section 112 rules without changes.) For example, a State might submit a request under option three, program approval, for authority to regulate all source categories except for dry cleaners. The State's dry cleaner rules may be very different from the Federal rules so these rules will be submitted under option 2, rule substitution. The State might submit its air toxics new source program for approval in lieu of the modifications rule under option 2. The State wants to withhold credit for plant shutdowns under the early reduction program, so this might be submitted under option 1. The State might implement the permit hammer provisions promulgated under authority of section 112(j) without changes, therefore, no submission under this subpart would be necessary. (Note that this description is purely for illustrative purposes; EPA is not making any statement about whether any specific changes would be approved.) The three options for approval are summarized in the following table.

TABLE 1.—SIMILARITIES AND DIFFERENCES BETWEEN PROPOSED APPROVAL OPTIONS

| | Type of approval | | |
|---|---|---|---|
| | §63.92 | §63.93 | §63.94 Section 112 emission standards substitution |
| | Section 112 rule adjustment | Section 112 rule substitution | |
| Approval of a State rule or State program? | Rule .... | Rule .... | Program. |
| Approval in lieu of emission standards? | Yes ..... | Yes ..... | Yes. |

TABLE 1.—SIMILARITIES AND DIFFERENCES BETWEEN PROPOSED APPROVAL OPTIONS—Continued

| | Type of approval | | |
|---|---|---|---|
| | §63.92 | §63.93 | §63.94 Section 112 emission standards substitution |
| | Section 112 rule adjustment | Section 112 rule substitution | |
| Approval in lieu of rules other than emission standards? | Yes ..... | Yes ..... | No. |
| Approval in lieu of future section 112 emission standards? | No ..... | No ..... | Yes. |
| Federal rulemaking required as part of approval? | No ..... | Yes ..... | Yes. |
| 40 CFR part 70 program approval requirement for section 112(l) approval? | No ..... | No ..... | Yes. |
| Permit must be expressed in the form of the section 112 rule? | Yes ..... | No ..... | Yes. |
| Level of control and compliance measures considered separately in determining stringency? | Yes ..... | No ..... | Yes. |

In receiving approval of a State rule or program, a State has the responsibility to respond in a timely fashion to EPA requests for information needed to review the adequacy of State implementation and enforcement of an approved rule or program. The EPA will develop guidance for the regular review and intermittent audits of approved State rules and programs.

After approval has been granted, if EPA finds that a rule or program is being implemented or enforced in an inadequate manner, EPA would have the authority to withdraw approval of that rule or program. Before approval is withdrawn, however, the State would have the opportunity to correct the deficiencies identified in EPA's review or audit. The EPA would inform the State of changes that need to be made and if the State does not take adequate

action to correct the deficiencies and a public hearing would be held and written testimony accepted. The State would then be given 90 days to correct the situation. Only after this process has taken place, if EPA is still not satisfied, would EPA withdraw approval of the rule, the program or part of the rule or program. Upon withdrawal, States would be required to open 40 CFR part 70 operating permits according to the provisions § 70.7(g) and rewrite permit conditions to reflect requirements of the applicable Federal section 112 rule.

Under §§ 63.96(b)(4)(v) and 63.96(b)(6)(ii), which address withdrawal of approval of State programs either by EPA or voluntarily by the State, the proposal states that EPA has authority to enforce the applicable section 112 requirement. This authority is a restatement of section 112(l)(7), which requires that nothing shall prohibit EPA from enforcing any applicable emissions standard or requirement under section 112. EPA always has concurrent authority to enforce the applicable section 112 standard, which may be either an approved State standard or a Federal standard, depending upon whether the State standard has been federally approved pursuant to the procedures set forth in this proposal.

The federally promulgated section 112 standard is the applicable and federally enforceable standard unless and until a State section 112 standard is approved by EPA pursuant to the procedures set forth in this proposal. Once approved, the State standard becomes the applicable standard which EPA has authority to enforce, and the federally promulgated standard is no longer applicable or enforceable. Upon withdrawal of approval of a State standard, the federally promulgated standard for which the State standard substitutes once again becomes the applicable standard. In the withdrawal notice, EPA will put sources on a reasonable and expeditious schedule for coming into compliance with the federally promulgated standard. EPA solicits comment on its approach to approval and withdrawal of approval of State standards that result in substitution of State standards for the otherwise applicable Federal standard or resubstitution of the Federal standard upon withdrawal or approval of a State standard.

## III. Rationale

### *A. Eligibility and Scope of Approval*

Subsection 112(l) of the CAA allows States to submit programs to EPA for approval for reducing emissions of HAP's from stationary sources. Today's proposed rule would use the definition of "State" given in proposed subpart A: "all non-Federal authorities, including local agencies, interstate associations and State-wide programs that have been delegated authority to implement (1) the provisions of this part or (2) the permit program established under 40 CFR part 70 of this chapter or both (1) and (2)." This definition would include Indian Tribes that have such authorities. Local agencies would be required, as per subsection 112(l)(8), to consult with the respective State before submitting a rule or program for approval. State agencies would have an option of submitting rules or programs for approval on behalf of a local agency in their jurisdiction after consultation with the local agency.

While generally enforceable outside of a permit, much of the implementation and enforcement of section 112 rules often will take place through 40 CFR part 70 permits. In addition, a significant oversight mechanism for judging the adequacy of implementation and enforcement of an approved rule or program will be through review, enforcement and audit of 40 CFR part 70 programs. Therefore, States that wish to seek approval of State rules and programs in lieu of Federal rules should first seek approval of a 40 CFR part 70 program. Exceptions may be allowed in instances where a State seeks approval to implement certain rules in place of Federal rules before receiving 40 CFR part 70 program approval. EPA anticipates that the most likely exception would be for approval of rules under § 63.92 or § 63.93 to adjust or substitute for Federal section 112 emission standards that are promulgated before States have reasonable opportunity to obtain approval of 40 CFR part 70 operating permit programs. No exceptions are anticipated under § 63.94 since EPA approval and subsequent permit reviews are necessarily conditional on the existence of an approved 40 CFR part 70 operating permit program. Comment is solicited on the need for an approved 40 CFR part 70 operating permit program as a precondition for approval under any option in today's proposed rule.

Certain section 112 authorities would not be delegated to States under these proposed regulations. These include any authority that might allow a State to regulate air toxics sources in any manner which is less stringent that the Federal program. For example, a State could not regulate fewer pollutants, postpone regulatory compliance dates, or decrease reporting requirements. In addition, under today's proposed rule, a State could not receive authority to regulate pollutants not on the list of HAP's established under section 112(b) or the list of substances established under section 112(r). EPA is seeking comment on whether authority to regulate additional pollutants can or should be delegated and whether such delegation would be lawful.

Today's proposed rule specifies criteria for delegation of certain of EPA's authorities and responsibilities under section 112 and provides that States seeking approval of programs under section 112(l) must meet the approval criteria of section 112(l)(5) as these criteria are specified in § 63.91 and in §§ 63.92 through 63.95 of today's proposed rule. Section 112(l)(5) requires that a State program contain adequate authorities to assure compliance by all sources within the State with each standard, regulation or requirement established by the Administrator under section 112; adequate authority and resources to implement the program; an expeditious schedule for implementation and compliance; be in compliance with the guidance in today's proposed rule upon its promulgation; and otherwise be likely to satisfy, in whole or in part, the objectives of the Clean Air Act. These section 112(l)(5) criteria are contained in the approval criteria of today's proposed rule.

In addition, today's proposed rule provides that, if a State seeks delegation of authority to implement and enforce section 112 standards or requirements exactly as promulgated by EPA, approval of the State's operating permit program under part 70 will suffice to satisfy the approval criteria of section 112(l)(5). This provision does not change the requirements for approval under part 70. In order to obtain and retain part 70 approval, a State must demonstrate adequate authority and resources to implement and enforces Federally promulgated section 112 applicable requirements and its ability to obtain adequate authority to implement and enforce future Federal section 112 applicable requirements, whether or not it also seeks approval under section 112(l) for State standards that are different from Federally promulgated standards.

EPA believes that satisfying the approval criteria of section 112(l)(5) by satisfying the approval of part 70 as specified in § 70.4 provides sufficient safeguards for EPA to delegate authority to States to implement and enforce section 112 standards and requirements that are unchanged. A State's request for approval of its operating permit program under part 70 would be an implicit request under section 112(l) for delegation of unchanged federally

promulgated section 112 standards and requirements. Nevertheless, such a request under part 70 would only apply to sources covered by the State's part 70 program. Delegation authority for sources not covered by the State's part 70 program would require a request for approval under section 112(l). For example, a State might seek approval for a State standard that applied to a part 70 deferred or exempted source, such as nonmajor sources exempted under § 70.3(b)(2), or for section 112(r) requirements that are not implemented through the part 70 permit (for example, requirements applicable to section 112(r) sources not subject to part 70). Such approvals would require a request for approval under section 112(l).

Therefore, under today's proposed rule, a State that requests and receives approval for its part 70 operating permit program would not need to submit a request for approval under section 112(l) in order to implement and enforce section 112 standards and requirements unchanged from the Federally applicable requirements under part 70, with the exception of those types of situations discussed above. Following the approval of the part 70 program, EPA will exercise its responsibility to ensure that the requirements of section 112(l)(5) continue to be met by the State. This oversight function may be combined with EPA's oversight functions under part 70.

EPA considers its delegation authority to be broad enough to allow this delegation without a formal request for approval under section 112(l) by States seeking delegation of unchanged section 112 standards or requirements, as long as the part 70 operating permit programs of those States have been approved. Authority to delegate section 112 requirements is explicitly specified in section 112(l)(1), which allows a State to submit a program that provides for partial or complete delegation of the Administrator's responsibilities to implement and enforce emissions standards and prevention requirements. This is a clear indication of Congress's intent that EPA may delegate section 112 standards and requirements to States with approved section 112(l) programs. Since EPA considers the criteria for approval of part 70 operating permit programs to be at least as comprehensive as the criteria for approval of section 112(l) programs, and since the State is obligated under part 70 to implement and enforce through permits the applicable requirements of section 112, EPA believes that it may delegate section 112 standards and requirements to States with approved part 70 operating programs without a formal request under section 112(l). EPA solicits comment on its approach to delegation of authority for implementation and enforcement of section 112 applicable requirements unchanged from Federally promulgated requirements.

In addition, EPA believes the Act may grant broader authority for delegation of section 112 standards and requirements than that specified in section 112(l). Congress indicated its intent that EPA may delegate section 112 authority to the States in frequent section 112 references to authorities and responsibilities that may be assumed by either EPA or the State, as well as to coordination between EPA and the States in developing areawide strategies to reduce risks from air toxics emissions. Such references are found, for instance, in sections 112(g), 112(i), and 112(k). Moreover, in addition to specific references in section 112 to the Administrator's authorities and responsibilities, Congress provided the Administrator with general authority in section 301(a) to prescribe such regulations as are necessary to carry out the Administrator's functions under the Clean Air Act, and this authority provides additional support for delegation through regulations.

Therefore, EPA is considering whether the Act provides it with a general delegation and authority that would allow delegation of section 112 standards and requirements independently of the submittal of a program under section 112(l) or part 70. Among other things, such a general authority would allow delegation of standards prior to approval of a part 70 program without the need to follow all subpart E procedures. It may also allow delegation of other of its authorities and responsibilities, such as addition of pollutants to the list of pollutants under section 112(b) or implementation and enforcement of any other section 112 authorities and responsibilities. EPA solicits comment on this view of its delegating authority and whether approval of either a State's operating permit program under part 70 or a State's request under today's proposed rule is a necessary precondition for delegation of section 112 authorities and responsibilities.

Once approved, a State rule or program would be Federally enforceable in lieu of an otherwise applicable section 112 rule. Part 70 permits would contain the requirements of the approved State rule or program rather than the otherwise applicable Federal rule. Such permit requirements would be enforceable by EPA, the State, and citizens acting pursuant to section 304 of the Act to the same extent as specified in part 70.

Approval of a State rule or program would not supersede the requirements of any Federal rules other than those authorities specifically delegated to a State as part of the subpart E approval. Thus, for example, when a State has been approved to implement a State rule or program in lieu of a particular Federal emissions standard established under section 112, other Federal requirements or regulations established pursuant to Title I and other requirements of the CAA still apply.

A 40 CFR part 70 permit issued after an approval under subpart E must note that if, for any reason, approval is withdrawn, then the permit would have to be revised according to the provisions of § 70.7. The current permitted operating conditions would be replaced by the otherwise applicable Federal section 112 rule.

When a State amends, repeals or revises an approved rule, the revisions must either be submitted to EPA for approval or the State Attorney General must provide a written finding that the revised authorities are adequate to assure compliance by all sources with all applicable requirements. If the changed rule is disapproved, EPA may initiate procedures to withdraw approval of the State's program or relevant portions of the State's program. The revised State rule is not Federally enforceable unless and until approved by EPA. Sources must comply with the previously approved rule until the new rule is approved or approval of the previously approved rule is withdrawn.

*B. Criteria Common to All Approval Options*

The criteria for approval described in today's proposed rule are based on the requirements of subsection 112(l)(5). A State requesting approval must demonstrate adequate legal authority to implement and enforce the approved rule or program. This demonstration would include a letter from the State Attorney General certifying the existence of adequate authority and all State statutes, regulations or other requirements granting such authority. The State also must demonstrate adequate authority to assure compliance by all sources in the State with each applicable requirement established by EPA under section 112 and the State must demonstrate adequate resources to implement and enforce the approved rule or program. Finally, the State must submit a schedule, plan and procedures providing for adequate and expeditious implementation, compliance and

enforcement of the approved rule or program. Such a showing would include commitments to adhere to EPA's Revised Compliance Monitoring Strategy (March 29, 1991) and the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators guidance (February 7, 1992). The approved rule or program must also be likely to satisfy in whole or in part the objectives of the Act.

Section 63.91 describes criteria common to all approval options. §§ 63.92 through 63.94 describe specific criteria for each of the three approval options. Any rule or program approved under subpart E must meet all the common criteria and all of the criteria of one of the three sets of specific criteria. § 63.95 describes additional criteria that must be met for approval of a State's ARP program, under either § 63.92 or § 63.93. Specific criteria for the three approval options are described in separate sections below.

Under today's proposed rule making, upon receipt of a request for approval, EPA would review the State's application for completeness and notify the State within 30 days whether additional information needs to be included. Within 180 days, EPA is required under section 112(l)(5) to approve or disapprove the request. If the request is disapproved, EPA would inform the State of the revisions that are necessary to obtain approval.

*C. Approval of a State Rule That Adjusts a Section 112 Rule*

Section 63.92 of today's proposed rule describes criteria that would need to be met for EPA approval of a State rule that makes specified adjustments to a Federal section 112 rule. This approval option is intended to be exercised by a State seeking approval of a rule that is substantially similar in form to a Federal section 112 rule, but that incorporates specified changes, or adjustments, that make the State rule unequivocally no less stringent than the Federal rule. This will normally be the case only when a State rule has been developed using an existing Federal rule or proposal as a basis. It is not EPA's intent that this option would be invoked for approval of State rules where any sort of involved analysis would be required in order for EPA to determine that the adjusted State rule was no less stringent than the Federal section 112 rule.

The EPA anticipates that this option could be used to obtain approval of State rules that adjusted Federal emission or other standards established under sections 112 (d), (f) or (h) (including any general provisions promulgated in part 63); or to obtain approval of adjusted Federal rules promulgated under: section 112(g), regarding modifications; section 112(j), regarding case-by-case emission limits by permit; section 112(i)(5), regarding early reduction limits; or section 112(r), regarding accidental release prevention (ARP) programs; or other section 112 requirements. The EPA is soliciting comments on the applicability of this approval option for the delegation of other section 112 authorities expressly retained by the Administrator under § 63.90(c) in today's proposed rule and on the appropriateness of the conditions on such delegation.

Approval under § 63.92 (rule adjustment) is somewhat similar to approval under § 63.93 (rule substitutions). Procedurally, under both approval options, a State would generally be seeking approval of a single State rule that could be implemented and enforced in place of an otherwise applicable Federal section 112 rule. Under both approval options, the State would have to obtain EPA's approval under section 112(l) before the respective State rule would be Federally enforceable. Moreover, the net effect of approval under either option is basically the same: an approved State rule would be implemented and enforced in place of the otherwise applicable Federal rule. The main difference is that EPA anticipates that approval of an adjusted Federal section 112 rule under § 63.92 would be less complex and more straightforward than under § 63.93 because of the limited types of adjustments that can be made under approval § 63.92.

In addition, both the rule substitution option in § 63.93 and rule adjustment option in § 63.92 differ from the option allowed under § 63.94 of today's proposed rule in that both require a demonstration of rule stringency as part of the approval submission to EPA, whereas the latter option involves EPA approval of a State commitment to make this stringency demonstration later through the 40 CFR part 70 operating permit process.

Because approval under § 63.92 involves an adjustment to an existing Federal section 112 rule, that Federal rule must be promulgated before approval of an adjusted State rule can be given. This is necessary because EPA's determination of the stringency of the adjusted Federal section 112 rule would necessarily use the Federal rule itself as a starting point for comparison. At a minimum, the enforcement and compliance provisions of any proposed State rules must be sufficient to ensure practical enforceability of the State standard.

Any request for approval under this option must meet all of the criteria of § 63.92 as well as the common approval criteria in § 63.91 before approval may be granted. Any request for approval of an adjusted ARP rule must also meet the criteria of § 63.95 before being approved. As part of its submission, the State must provide EPA with all of the following:

1. A demonstration that the public within the State has had notice and opportunity to submit written comment on the State rule. Opportunity for public comment afforded by the State must be sufficient to meet minimum Federal requirements for notice and opportunity for public comment as set forth in the Federal Administrative Procedure Act, 5 U.S.C. section 553(b), (c). Under today's proposed rule EPA considers it sufficient to limit the requirement for notice and opportunity for public comment to within the State, but EPA is soliciting comments on the appropriateness of alternative notice and public comment requirements including whether notice to adjacent States should be required. Today's rule would not restrict receipt of or response to any comments received from members of the public outside the State.

2. A demonstration showing that each State adjustment to the Federal rule individually meets the following criteria.

(a) Each adjustment is unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability. That is, all emission points within all affected sources subject to the Federal section 112 rule must also be subject to the State rule for which approval is sought.

(b) Each adjustment is unequivocally no less stringent than the otherwise applicable Federal rule with respect to the level of control for all affected emission points within all affected sources. Level of control means the degree to which a standard requires a source to limit emissions or to employ design, equipment, work practice, operational accident prevention or other requirements or techniques (including a prohibition of emissions) for each HAP listed pursuant to section 112(b) or substance regulated under 40 CFR part 68.

(c) Each adjustment is unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for every affected source. Compliance and enforcement measures means requirements within a rule or program relating to enforcement, including

monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling, maintenance and repair of process or air pollution control equipment, and other measures, as well as auditing, source registration and submission of risk management plans as required in the accidental release prevention program.

(d) Each adjustment assures compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(e) Each adjustment qualifies under one of the listed adjustments.

The following State adjustments to section 112 Federal rules are approvable under § 63.92 of today's proposed rule, unless specifically disallowed in the corresponding Federal section 112 rule for which adjustment is being sought:

(1) Lowering an emission rate requirement;

(2) Lowering a de minimis level established under a section 112 rule;

(3) Shortening a minimum averaging time;

(4) Adding a design, work practice, operational standard or other such requirement;

(5) Increasing a required control efficiency;

(6) Increasing an offset or emission trading discount factor established under a section 112 rule;

(7) Increasing the frequency of required reporting, sampling or monitoring;

(8) Adding to the amount of information required for records or reports;

(9) Decreasing the amount of time to come into compliance;

(10) Limiting or precluding emission trading credit for certain emission reductions;

(11) Increasing a required offset ratio;

(12) Limiting or precluding opportunities for emissions averaging;

(13) any adjustments allowed in a specific section 112 rule.

The EPA is soliciting comments on whether other changes might be determined to be unequivocally no less stringent and therefore should be listed as approvable adjustments, and whether any of the listed changes should not be considered as approvable adjustments. In addition, EPA solicits comments on whether a category of "any other adjustments which are unequivocally no less stringent and which have been approved by the Administrator upon petition by the State," should be added to the list of unequivocally no less stringent adjustments.

In providing flexibility to State and local agencies through this and the other two approval options, EPA may approve a State or local rule or program which embodies policy objectives not identical to those of EPA. EPA is seeking comment as to whether it should consider disapproving programs that pursue different policy objectives, even when such programs are clearly at least as stringent and meet the other criteria of this subpart. In addition, EPA is seeking comment on whether adjustments should be included even though there is the possibility that a State or local program could use this flexibility to pursue policy objectives different from those of EPA. For example, while EPA may have included a trading provision in a section 112 rule, a corresponding State rule might seek to limit trading options to more strictly control emissions of hazardous air pollutants in that State. Thus, program adjustments involving, for example, the increase of an offset or emission trading discount, the increase of a required offset ratio, limits on emission trading credit for certain emission reductions, or limits on opportunities for emissions averaging would involve changes that are at least as stringent as those required by EPA but would be different from the Agency's policy objectives.

Before submitting a request for approval under this option, the public within the respective State must have been given the opportunity to comment on the State rule. If EPA approves a State rule under this option, notice of approval will be published in the **Federal Register** and the approved State rule will be incorporated, either directly or by reference, at EPA's discretion, under subpart A of part 63. In the case of a rule approved under § 63.95, the approved rule will be incorporated under part 68.

The EPA believes additional rulemaking as part of the approval process under this option is not necessary since any State request under this option will only be approved by EPA if adjustments which are included in this section 112(l) rulemaking are incorporated; adjustments that the public has opportunity to comment on in today's notice. The EPA solicits comment on this. The EPA also is soliciting comments on the alternative of incorporating the approved rule, either directly or by reference, into the subpart containing the otherwise applicable Federal rule or under subpart E rather than under subpart A.

After approval, authority would thereby be delegated to the State to implement and enforce the approved rule in place of the otherwise applicable Federal rule. The approved rule is Federally enforceable. Subsequently, only the operating conditions resulting from the approved State rule would appear in the 40 CFR part 70 permit of a source subject to the rule's requirements. These operating conditions would be Federally enforceable.

If EPA finds that any of the requirements of § 63.92 or § 63.91 have not been met, including the requirements of § 63.95 in the case of ARP rules, EPA would disapprove the request for approval according to the criteria under § 63.91(a)(3) of today's proposed rule.

*D. Approval of a State Rule That Substitutes for a Section 112 Rule*

Section 63.93 of today's proposed rule describes criteria that must be met for EPA to approve a State rule that differs from the otherwise applicable Federal rule in ways that do not match the approvable adjustments listed in § 63.92. This might be the case when a State submits a rule that differs significantly in form or that may be less stringent in certain aspects of level of control or compliance measures but that is no less stringent in terms of emissions reduction. Because such a rule differs significantly from the otherwise applicable Federal section 112 rule either in form or in terms of differing from certain adjustments considered approvable under § 63.92, this type of rule, once approved, would be considered to substitute for and not merely to adjust the Federal rule. Comment is solicited on whether different nomenclature should be used to distinguish between an "adjustment" and a "substitution." Procedures for approval under this option are substantially similar to those of § 63.92.

The EPA anticipates that this rule substitution option could be used to obtain approval of State rules that would substitute for Federal emission or other standards established under sections 112(d), (f) or (h) (including any general provisions promulgated in part 63); or to obtain approval of State rules to substitute for Federal rules promulgated under: section 112(g), regarding modifications; section 112(j), regarding case-by-case emission limits by permit; section 112(i)(5), regarding early reduction limits; section 112(r), regarding ARP programs; or other section 112 requirements. Comment is solicited on the applicability of this approval option for the delegation of other section 112 authorities expressly retained by the Administrator under § 63.90(c) in today's proposed rule and on the appropriateness of conditions on such delegation.

Approval under § 63.93 (rule substitution) is somewhat similar to approval under § 63.92 (rule adjustment). Procedurally, under both approval options, a State would generally be seeking approval of a single State rule which could be implemented and enforced in place of an otherwise applicable Federal section 112 rule. Under both approval options, the approval process would have to be completed before the respective State rule could be Federally enforceable. Moreover, the net effect of approval under either option is basically the same: an approved State rule would be implemented and enforced in place of the otherwise applicable Federal rule. The main difference is that EPA anticipates that approval of a State rule substituting for a Federal section 112 rule under § 63.93 would require a more demanding demonstration of stringency than under § 63.92. Nevertheless both the rule substitution option in § 63.93 and rule adjustment option in § 63.62 resemble each other more than they resemble the option allowed under § 63.94 of today's proposed rule in that the first two options require State demonstrations of rule stringency as part of the approval submission to EPA, whereas the latter option approves a State commitment to make this stringency demonstration at a later time as part of the 40 CFR part 70 operating permit process.

Because approval under § 63.93 involves a substitution of an existing Federal section 112 rule by a State rule, that Federal rule must be promulgated before approval of a substitute State rule can be given. This is necessary because EPA's determination that the State rule is no less stringent than the Federal section 112 rule it substitutes for would necessarily use the Federal rule itself as a starting point for comparison.

Any request for approval under this option must meet all of the criteria of § 63.93 as well as the basic approval criteria in § 63.91 before it can be approved. Any request for approval of a substitute accident release prevention (ARP) rule must also meet the criteria of § 63.95 before approval. As part of its submission, the State must provide EPA with a demonstration that the State rule contains:

(1) Applicability criteria that are no less stringent than those in the relevant Federal rule;

(2) Levels of control and compliance and enforcement measures that, when considered together, result in emission reductions from each affected source that are no less stringent than those that would result from the otherwise applicable Federal rule;

(3) A compliance timetable that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule.

Under this approval option, these criteria are the basis for EPA's determination that authority can be delegated to a State for implementing and enforcing a State rule in lieu of a Federal rule.

*Applicability*—An approved State rule must apply to every source to which the otherwise applicable Federal rule applies. A State rule will not be approved under this option if it compromises Federal rule applicability criteria—even if the State believes that any such compromise would be offset by a more stringent level of control or compliance measures on sources affected by the State rule but not by the Federal rule. Hence, if an otherwise applicable Federal rule applies to a source, the State rule operating in lieu of that Federal rule under this option must also apply to that same source. However, if a source is subject to Federal rules but the State is not requesting approval under this option to substitute for those Federal rules, then State rules would not apply under this option. For those sources, the Federal standards are the applicable requirements.

*Demonstration of no less stringent levels of control and compliance measures, when considered together*—this criterion significantly differentiates this approval option from the other two options in today's proposed rule. The EPA recognizes that there are more elements to rules that affect emission limits or reductions than just a level of control. Equally important are the compliance measures that are required for testing, monitoring, recordkeeping, reporting, operation and maintenance, and compliance certification.

Under this option in today's proposed rule, EPA will only approve a State rule if it believes that the emission reductions gained by the State rule are at least as great as the emission reductions that would have been gained by the Federal rule for each affected source. EPA may approve a State rule that is less stringent in some aspects regarding the level of control if the level of control is offset by a more stringent set of compliance measures that when taken together with the level of control result in as great or greater emission reductions. For example, if a State rule had a slightly reduced level of control efficiency required but a much shorter averaging time, EPA might, in a particular case, expect that the State rule would achieve greater emission reductions and thereby approve the State rule. Or, a State rule might have less frequent reporting requirements but require a much greater level of control. Again, EPA might, in a particular case, find that the resulting emission reductions expected of the State rule are greater than those of the Federal rule.

EPA may include guidance on approval under this option either as part of promulgated Federal section 112 rules or in individual delegation manuals published with other promulgated section 112 rules. The EPA solicits comments on the usefulness and possible content of such guidance. The EPA intends to give latitude to the States in making such demonstrations. However, several guidelines are offered that limit the latitude that would be extended to States in their approval submissions:

(1) Except as expressly allowed in the otherwise applicable Federal emission standard, any forms of averaging across facilities, source categories, or geographical areas, or any forms of trading across pollutants, will be disallowed for a demonstration of stringency under § 63.93. Any State rule must be demonstrated to be no less stringent than an otherwise applicable Federal rule for any affected source subject to the Federal rule rather than, on average, across sources. This does not mean that a State's submittal must necessarily include a separate demonstration of stringency for each individual affected source within a State. Rather, a State must demonstrate that its rule could reasonably be expected to be no less stringent for any affected source within the State, reflecting knowledge of the number, sizes and operating characteristics of that kind of source within the State subject to the relevant State rule. A worst case analysis may reasonably suffice in some such demonstrations. EPA solicits comment on this approach and on ways to demonstrate stringency under this option.

(2) Because of the complexities involved in determining whether alternative compliance measures are no less stringent, EPA intends to require detailed demonstrations in State submissions if the submissions propose monitoring, recordkeeping or reporting requirements that are substantially different from those in the otherwise applicable Federal rules.

In general, when considering approval of a State's rule under this option, EPA will look first to any equivalency provisions or allowance for alternative emission limits and compliance measures established in the otherwise applicable Federal rule. Beyond this,

approval will be determined on a case-by-case basis considering the nature of the particular State rule and the completeness of the supporting data accompanying the State's approval submittal.

The EPA solicits comment on whether to prohibit certain changes from approval as Federally enforceable, even if they result in requirements that are no less stringent. For example, a State might seek approval of a State rule that altered a section 112 emission standard by regulating an additional air pollutant not listed under section 112(b).

EPA is also soliciting comment on the type of demonstration of stringency that would be required for approval of rules substituting for Federal rules other than emission standards. For example, the Federal rule to implement section 112(g) will be far reaching in its scope and it may be a significant burden to show, a priori, that a State substitution for this rule, involving case-by-case determinations, would result in equal or greater emission reduction for every affected source.

Under this proposed rulemaking, within 45 days after receipt of a complete request for approval under this section, EPA would seek public comment on the State request for approval. Comments must be submitted concurrently to the State and to EPA. If, after review of all public comments and written State responses to comments provided to EPA within 30 days of the closing of the comment period, EPA finds that the criteria of this section and the criteria of § 63.91 are met, as well as applicable criteria in § 63.95 for accident release prevention (ARP) rules, the State rule would be approved by EPA and the approved rule would be published in the Federal Register and incorporated, either directly or by reference at EPA's discretion, under subpart A of part 63. EPA solicits comment on the alternatives of incorporating the approved rule, either directly or by reference into: (1) The subpart containing the otherwise applicable Federal rule; or (2) into subpart E of part 63.

After approval, authority would thereby be delegated to the State to implement and enforce the approved rule in place of the otherwise applicable Federal rule. The approved rule is Federally enforceable. Subsequently, only the operating conditions and other requirements resulting from the approved State rule would appear in the 40 CFR part 70 permit of a source subject to the rule's requirements. These requirements would be Federally enforceable.

If under this option, EPA finds that any of the requirements of § 63.93 or § 63.91 have not been met, EPA would disapprove the request for approval according to the criteria under § 63.91(a)(3) of today's proposed rule.

*E. Approval of a State Program That Substitutes for Section 112 Emission Standards*

Section 63.94 of this proposed rule describes criteria necessary for EPA approval of a State program in which a State commits to incorporate conditions in 40 CFR part 70 operating permits that are no less stringent than otherwise applicable Federal section 112 emission standards. A State program, in the context of today's proposed rule, is not necessarily a single rule but could also be a collection of State statutes, regulations, or other requirements that limits or will limit the emissions of HAP's from affected sources. This option is intended only for approval of State programs that would be implemented and enforced in place of otherwise applicable Federal section 112 emission standards promulgated pursuant to sections 112 (d), (f), and (h) of the CAA. Under this section, the EPA does not intend to approve State programs that would be implemented and enforced in place of Federal section 112 rules other than section 112 (d), (f), or (h) rules or to provide for the delegation of Federal authorities retained by the Administrator under § 63.90(c). For example, authorities relating to other provisions within section 112 (dealing with modifications, early reductions, case-by-case emission limitations and accidental releases) are more appropriately delegated under the rule-based options under §§ 63.92 and 63.93 in today's proposed rule. Comment is solicited on applying this approval option to other than section 112 emission standards.

Under section 112 of the CAA, EPA is obligated to establish emission and other standards under subsections 112 (d), (f) or (h) for categories of sources listed pursuant to subsection 112(c)(1). The EPA has published an initial list of 174 categories of major and area sources (57 *FR* 31576 (1992)) and has proposed a schedule for promulgating standards for each of these listed categories (57 *FR* 44147 (1992)). Section 112 seeks to impose technology-based standards on source categories, to be followed by further standards if certain levels of residual risk remain after imposition of the technology-based standards. Section 112 requires establishment of standards that apply to categories of sources, i.e., groups of sources having some common features suggesting that they should be regulated in the same way and on the same schedule.

In the last decade, many States have established programs, with EPA's support, for the control of air toxics emissions from many of the same source categories that have been listed under section 112(c)(1), and for many of the same HAP's that EPA will regulate under section 112. Because many State programs preceded EPA's new emission standards program under section 112 of the CAA, some are structurally different than section 112 standard requirements in important ways. For example, some States have enacted air toxics programs that do not categorize sources as EPA does for standard-setting purposes or that do not apply technology-based standards to specific categories of sources. Instead, these States may evaluate the overall impact of an entire plant site on the surrounding environs in terms of health- or risk-based benchmarks, as a first step, and then consider the need for controls on some or all emission points if that facility's air toxics emissions cause exceedances of the benchmarks. As a particular example, some States have established acceptable ambient levels of HAP's as health benchmarks for evaluating the fenceline impact of each facility's emissions. In this type of program, the particular control requirements imposed on any given facility by the State, if any, may be quite situational, may depend on various facility-specific parameters, and may be more or less stringent than the level of control that would result from any Federal standards under section 112 applicable to that same facility.

Because some States' air toxics programs result in facility-specific control requirements, they are inherently "case-by-case" in terms of their impact on any particular source within a facility. This results in another important structural difference between some States' programs and the new Federal emissions standard program under section 112. Unlike case-by-case programs, the Federal program would establish standards for entire categories of sources, resulting in a similar level of control for all subject sources within a category or subcategory. In contrast, States' programs may result in one level of control for one source within a certain category and another level of control for a similar source in the same category.

States with structurally different programs from the Federal program are concerned the EPA's emission standards program might potentially disrupt the continued implementation of their programs if they could not operate their

own programs in lieu of the Federal program. The primary reason for their concern is that the simultaneous implementation of the States' programs and the new Federal emissions standards under section 112 could result in dual regulatory conditions. As discussed earlier in this notice, States and industries fear that dual regulatory conditions would be burdensome because they are more time consuming and costly, and they potentially could result in inconsistent or incompatible conditions relating to levels of control or monitoring, recordkeeping and reporting. Moreover, because of structural differences, States are concerned that they could not reasonably demonstrate in advance of case-by-case application, using either of the rule-based approval options under § 63.92 or § 63.93, that their programs would result in requirements that are no less stringent for all potentially affected sources than those that would result from otherwise applicable Federal standards.

The EPA agrees that States with air toxics programs differing structurally from the Federal program should not be unnecessarily deterred from implementing and enforcing these programs in place of Federal emission standards if these programs result in emission reductions and attendant permit conditions that are no less stringent than would result from the otherwise applicable Federal standards. The EPA is thus offering an option under § 63.94 of today's proposed rule under which authority could be delegated to States to implement and enforce their air toxics programs as Federally enforceable in lieu of section 112 Federal emission standards through their part 70 permits. A State could implement and enforce its program under this option in lieu of none, any, or all Federal standards established or to be established under sections 112(b), (f) or (h), at the State's discretion and upon EPA approval.

The EPA is proposing that a State's submission for approval under § 63.94 could be "open-ended" in that it would not have to identify specific State standards that its program would implement and enforce in place of particular Federal section 112 emission standards. However, because of the open-ended nature of this approval option, a State would have to specifically request, in its approval submission, the Federal authorities for which it was seeking delegation under § 63.94. In other words, a State must specify the section 112 standards that would be covered under this option. It would be assumed that all other scheduled Federal emission standards not cited would be delegated without changes or through an approval under §§ 63.92 or 63.93. Delineation is necessary in order for EPA, the public and the regulated community to ascertain readily what emission standards apply to each affected source. Comment is solicited on EPA's intent to approve State programs that are open-ended in the sense of applying to all existing and future Federal section 112 emission standards, except as excluded in a State's submission for approval.

This third approval option requires a State to make a legally binding commitment that it will express all relevant emission or other limitations or requirements, resulting from the State's program, in 40 CFR part 70 permits for all affected sources in the form of the otherwise applicable Federal standard. Any such permit conditions would have to reflect emission or other limitations that would be no less stringent than those that would result from the otherwise applicable Federal standard.

Two important aspects of this option differ from the rule-based approval options under §§ 63.92 and 63.93. First, EPA is proposing to approve State submissions under § 63.94 that do not contain any demonstration of stringency as part of the up-front approval submissions. In contrast, the two rule-based approval options under § 63.92 and § 63.93 require a demonstration of stringency as part of the State submission for approval, before any CFR part 70 permits are written or revised to reflect the approved rules under § 63.94 demonstration of no less stringency is made at the permit issuance or revision stage. A second difference between this option and the two rule-based approval options under §§ 63.92 and 63.93 is that this option requires the 40 CFR part 70 permit conditions resulting from the State program to be expressed in the form of the otherwise applicable Federal emission standard. This requirement would allow EPA to review each permit and quickly and efficiently determine whether the permit conditions resulting from the State program are no less stringent than those that would result from the otherwise applicable Federal emission standard. The EPA believes that States should commit to expressing the requirements resulting from their programs in the form of the Federal standard: (1) Because States have the knowledge and experts to do so, (2) because the process of expressing the State requirements in the form of the Federal standard would be a necessary part of the State's internal comparison that would assure that the State requirements were at least as stringent as the Federal requirements would have been, and (3) because an adequate detailed EPA analysis of State permit requirements would not always be possible in EPA's 45 day review of permits. States have shown willingness, where possible, to express permit terms and conditions in the form of the otherwise applicable Federal rule.

The EPA is not proposing that the analysis, made by a State to convert its program requirements into the form of the otherwise applicable Federal standard, be incorporated in the 40 CFR part 70 permit. That is, no demonstration will be required in each permit specifying how the State translated the requirements of its program into the form of the otherwise applicable Federal standard. The fact that the State requirements are expressed in the form of the otherwise applicable Federal standard—together with the expression of emission limits or other requirements that are no less stringent than the otherwise applicable Federal standard—is sufficient demonstration by itself. Since the source must comply with no less stringent State standard and that standard is expressed in the form of the Federal standard, there can be no doubt that the source must comply with the no less stringent standard as it appears in the permit and that this assures compliance with the level of control of the Federal Standard. Comment is solicited on the issue of expressing State requirements in the form of a Federal section 112 emission standard in a 40 CFR part 70 operating permit.

Section 63.94 of today's proposed rule identifies several conditions that must be reflected in each affected 40 CFR part 70 operating permit. All such permits must incorporate conditions that:

(1) Reflect applicability criteria that are no less stringent than those in the otherwise applicable Federal standards,

(2) Express levels of control for each emission point that are no less stringent than those contained in the otherwise applicable Federal standards,

(3) Express compliance and enforcement measures for each emission point that are no less stringent than those in the otherwise applicable Federal standards,

(4) Express levels of control and compliance and enforcement measures in the same form, in the same units of measure and adopting the same or otherwise Federally approved monitoring and test procedures (only monitoring and testing methods which have been approved by EPA for the pollutant and source category), as under the otherwise applicable Federal standard, and

(5) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standards.

Additional discussion of these criteria follows because of their importance.

*Applicability*—the approved State program must apply to all sources and emission points to which the otherwise applicable Federal emission standards apply. In addition, the State's program may apply to additional sources, e.g., sources that have been exempted or deferred from the obligation to obtain a part 70 permit under § 70.3(b) (57 FR 32261 (July 21, 1992)) provided the State extends coverage of the part 70 program to those sources. A State's program would not be approved under this option if the program compromises Federal standard applicability criteria—even if the State contends that any such compromise is offset by more stringent levels of control or compliance measures on certain sources under the State program. Hence, if Federal standards apply to any emission point, the State program operating in lieu of those Federal standards under this option must also apply to each and everyone of those same emission points. A State program need not apply to sources subject to Federal standards for which the State is not taking delegation under this approval option; however, these sources would be subject to Federal standards under the State's 40 CFR part 70 program and the sources' part 70 permits must reflect all applicable Section 112 requirements. A State's program must assure compliance with all Federal section 112 emission standards, regardless of the number and type of approved 112(l) rules or program.

*Demonstration of a no less stringent level of control in the form of the Federal standard*—Federal emission standards will typically express a level of control in terms of a numerical emission limit or percent reduction that must be attained by an affected source. In such situations, a State with a program approval under this section shall express in the applicable permit a level of control, resulting from its own program, that is in the same form or metric as in the Federal standard (i.e., in terms of the same emission limit, level or reduction, including the same units of measure). (In general, EPA anticipates that part 70 permit conditions reflecting the approved adjustments under § 63.92 would also be expressed in the form of the Federal standard.)

As an example, a certain Federal emission standard may require an emission limit of 5 pounds per hour of a HAP from a particular piece of equipment. In this example, the State would have to express an emission limit resulting from its own program in the same units, i.e., pounds per hour in this case, and the actual limit would have to be 5 pounds per hour or less in order to be no less stringent than the Federal standard. Or, if a Federal standard required a 99 percent reduction in a pollutant from a particular emission point, the State would have to express an emission limit in the respective permit that achieved 99 or greater percent reduction from that emission point to be no less stringent and to express the requirements of its program in the form of the Federal standard. Oppositely, if the Federal emission limit is 5 pounds per hour, a part 70 permit requirement for 99 percent reduction would not be expressed in the form of the Federal standard, even if a State could show that a 99 percent reduction resulted in an emission rate less than 5 pounds per hour. In such a case the State would need to convert the percent reduction to pounds per hour and write the pounds per hour number into the permit.

By way of example as to how a State might translate a risk-based or ambient concentration standard to the form of Federal technology-based standard, a State might proceed as follows: if a State standard were expressed as a concentration not to be exceeded at the source fenceline, the State could determine, perhaps through dispersion modeling, an emission rate that could not be exceeded. This emission rate could then be expressed by an emissions reduction requirement that could be met using a certain type of control equipment. The emission reduction requirement could be directly comparable and translatable to the form of the corresponding requirement under the Federal Standard. Note that if the State's analysis concluded that no control equipment was required because the source did not exceed the risk-based standard, the Federal requirements would nonetheless apply, that is, the source still would be required to install control technology or meet the otherwise applicable conditions required by section 112.

In situations where a Federal standard does not contain a numerical emission limit, and instead specifies some sort of equipment, work practice or operational requirements, it is less clear what it means to express a level of control in the same form as the Federal standard. For example, if a Federal standard requires a leak detection and repair program, there may be no other control option that could be expressed directly in this same form, unless the Federal standard associates a specific numerical limit with this technology that could be used to demonstrate a level of stringency. As another example, if a Federal standard requires the installation and operation of a carbon absorber, it would be impossible to install a refrigerated condenser and express the standard in the same form and, therefore, the Federal requirement would apply. However, it is anticipated that many of the Federal standards to be promulgated under section 112 may contain provisions that would allow specific alternative control measures to be taken that are considered equally effective. For example, a standard may prescribe the use of an acid gas scrubber, catalytic oxidizer, or flare as equally effective for purposes of complying with particular control requirements. The EPA anticipates that this will afford some flexibility to States where a Federal standard is expressed as an equipment, work practice, or operational requirement.

Alternative measures considered equivalent may also be incorporated into delegation manuals that EPA may prepare in conjunction with individual emission standards. If so, 40 CFR part 70 permit conditions that reflect these equivalency provisions would be considered to be expressed in the form of the Federal standard, provided that the concomitant equivalent provisions in the Federal standard regarding compliance measures are also reflected in the permit.

The inclusion of equipment, work practice or operational requirements in a permit—other than those specified to be equivalent in the Federal standard—would not be considered to be an expression of level of control in the same form as the Federal standard. For example, if a Federal standard only specified that a carbon absorber or refrigerated condenser were equivalent when applied on a particular category of source, a permit requirement resulting from a State program, to use a flare, would not be considered to be an expression in the form of the Federal standard. Therefore, depending on the form of the Federal standard, it may not be possible to express some State requirements in the same form, in which case the Federal requirements would remain the applicable requirements. In such a case, the State may choose to incorporate its State requirements in the source's 40 CFR part 70 permit as State-origin only requirements under § 70.6(b)(2). Such State-origin only standards would not be Federally enforceable. Alternatively, the State may be able to obtain approval

of its substitution for an equipment standard under § 63.93. EPA encourages States to work with EPA during development of standards so that State alternatives that are at least as stringent as a Federal standard can be written into the standards.

*Demonstration of no less stringent compliance measures in the same form as the Federal standard*—compliance measures refer to the requirements of a Federal standard relating, for example to monitoring, test methods and procedures, recordkeeping, reporting and compliance certification. Compliance measures are as important as the level of control in effecting the intended emission reductions in the Federal standard. Hence, under § 63.94 in today's proposal, State's are required to incorporate conditions into a permit resulting from its program that reflect compliance measures that are both no less stringent than and expressed in the form of the otherwise applicable Federal standard.

Compliance measures are not always expressed in terms of numerical limits, as is typically the case for levels of control. Hence, there is less latitude for demonstrating that one set of compliance measures is no less stringent than another. Similarly, there is little latitude for demonstrating that an alternative set of compliance measures is expressed in the same form as another. Thus, unlike the latitude a State has under the rule replacement option in § 63.93 to demonstrate that an alternative level of control is no less stringent than the Federal standard, there is much less latitude under § 63.94 for a State to demonstrate that compliance measures not specified in the Federal standard are, indeed, no less stringent and expressed in the form of the compliance measures in the Federal standard.

Consequently, under the proposed approval option in § 63.94, States will have to incorporate, into permits, compliance measures that largely reflect the compliance measures specified in the otherwise applicable Federal standard. If alternative sets of compliance measures are specified within the Federal standard, or within concomitant delegation manuals, any of the specified alternatives could be incorporated into the respective permit by the State and meet the criterion under this approval option that compliance measures must be no less stringent and expressed in the form of the Federal standard—if the alternative incorporated into the permit by the State corresponded with the respective level of control in the Federal standard. For example, a particular Federal standard may specify one set of compliance measures if a source employs a carbon absorber, but specify another set of compliance measures if the source employs a flare on the same affected source. In such an instance, the set of compliance conditions that corresponded appropriately with the particular control device employed should be incorporated into the permit.

Pursuant to section 112(h)(3), Federal design equipment, work performance, or operational standards established pursuant to section 112(h) must provide for alternative means of emission limitation if an owner or operator demonstrates to EPA's satisfaction a reduction in emissions at least equivalent to the reduction achieved by the Federal standard. Subpart A will describe procedures for the implementation of section 112(h)(3) that allows owners or operators of sources provide to the Administrator alternative means of emission limitations. Once EPA determines that an adequate demonstration had been made, as prescribed under subpart A or in some cases under the respective Federal standard, the approved equipment or procedures could then be written into the permit under this approval option and be considered to be no less stringent than, and expressed in the form of, the otherwise applicable Federal standard. This should afford additional flexibility for States to employ this approval option.

Some States may desire more flexibility than this option provides. States may find that § 63.94 procedures do not allow enough flexibility to address design, equipment and work practice standards or to address alternative compliance measures. EPA is considering allowing a program approval option that gives States an opportunity to declare any State permit conditions Federally enforceable in lieu of the otherwise applicable standards, if the State could demonstrate the resulting operating conditions were at least as stringent as the otherwise applicable Federal requirements. EPA is not proposing this option today because of its concern that such an option would not meet the statutory criterion of section 12(l)(5)(A), which requires that approved State programs must contain authorities that assure compliance by all sources within the State with each applicable standard, regulation; or requirement established by the Administrator under section 112. EPA is also concerned with the level of EPA review that would be required to assure that State implementation of such an approved program at least as stringent as the otherwise applicable Federal requirements. EPA is seeking comment on such an approach.

The EPA is also seeking comment on other approaches that may provide States with sufficient flexibility to operate their programs in lieu of Federal requirements where the State program could be shown to be at least as stringent. Such approaches would need to provide adequate flexibility to the States, satisfy legal requirements to substitute for the otherwise applicable Federal requirements and provide satisfactory practical oversight by EPA.

After a State receives approval of its program under § 63.94, the otherwise applicable Federal standards would not be written into any permit that was issued or revised for sources covered by the State's program and the otherwise applicable Federal standards would not be enforceable unless and until such time that approval of the State program was withdrawn. Under an approved State program, permit conditions incorporating the State program's emission standards would instead be Federally enforceable permit conditions. The State must commit to reopen the permit of each source to which the State's approved program applies if approval is withdrawn under § 63.96. Such reopening must be performed according to the procedures of § 70.7.

EPA may review permits under the authorities of 40 CFR part 70, including as part of program reviews prescribed later in today's notice and proposed rule, to judge whether any delegated authorities under this option should be withdrawn.

### F. Accidental Release Prevention (ARP) Program

#### *1. Program Background and Applicability*

The major emphasis of section 112(r) of the CAA is to address the prevention of catastrophic accidents caused by the release of extremely hazardous substances into the air. The CAA section 112(r) requirements include a general duty provision; the development of a list of regulated substances with thresholds; a petition process for adding and deleting substances; prevention, detection and correction regulations and guidance; guidance for the use of the emergency order authority; and a study of release prevention, mitigation and response authorities under Federal law. Section 112(r) also contains requirements for the establishment of an independent Chemical Safety and Hazard Investigation Board, whose function will be to investigate accidental releases and make recommendations to EPA, OSHA and

States on various changes that should be instituted to prevent chemical accidents.

Rules developed under the provisions of section 112(r) will be codified in 40 CFR part 68 and will apply to stationary sources that manage or store a regulated substance at more than the associated threshold quantity. The definition of stationary source for section 112(r) is different from the definition of stationary source used in all other subsections of section 112. Applicability is not based on emissions from the source or the chemicals listed in section 112(b), consequently there will not be total overlap with the sources subject to the other section 112 provisions. A major portion of the 40 CFR part 70 permitted sources will be subject to section 112(r). Conversely, a large portion of sources subject to section 112(r) may not be required to receive part 70 permits.

*2. Delegation and Approval*

Delegation of the Accidental Release Prevention (ARP) program can occur in several ways. If a State chooses to implement the Federal requirements without changes, the ARP program can be delegated at the same time as the 40 CFR part 70 approval process, provided that the requirements of § 63.95 are met in the State's submission. This delegation can occur even if an agency in the State other than the air pollution control agency has been given the responsibility for administering section 112(r).

Alternatively, if a State chooses to administer an ARP program that is different but at least as stringent as the Federal program, the options outlined in § 63.92 or § 63.93 provide for approval of State ARP rules.

The State may submit a State ARP rule for approval any time after the promulgation of today's proposed rule. The State may not, however, receive delegation for the ARP program prior to promulgation of the list of regulated substances and risk management program rule(s) pursuant to section 112(r).

*3. State Program Specific Requirements*

(a) A State wishing to obtain approval of an ARP rule under section 112(l) must submit to EPA:

(i) Copies of the enabling legislation and regulations that provide the authority for the State to administer the Accidental Release Prevention program;

(ii) Information that documents that adequate resources are available to implement and enforce the provisions of the ARP program;

(iii) An expeditious implementation schedule that indicates the time frames within which the State plans to administer the program;

(iv) A description of the State program that outlines how the State would: Register the subject sources in their State; receive and screen the risk management plans (RMPs); provide technical assistance to subject sources; ensure adequate compliance and enforcement including a risk management plan auditing strategy; and provide coordination mechanisms the State will use with the Chemical Safety and Hazard Investigation Board, the State Emergency Response Commission, and the Local Emergency Planning Committee. In addition, the State may optionally outline those mechanisms which will be used to coordinate with the 40 CFR part 70 permitting program, if the ARP program is not implemented through the agency implementing the part 70 program. States may also describe the interaction of the ARP program with the Chemical Process Safety Management standards promulgated by the Occupational Safety and Health Administration.

(b) Any delegation of the ARP program requires the State program to contain a set of core elements that would ensure compliance with applicable section 112(r) requirements by all subject sources. This interpretation is consistent with the requirements in section 112(l)(5)(A) that requires an approved State program to contain "the authorities to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by EPA under this section." The language in § 63.95 sets out the core requirements for an approvable State ARP program.

The Agency believes that the ARP program cannot be subdivided into various components based on a certain set of chemicals or industry. Subdivision of the program by chemical or by industry would promote confusion for industry and inhibit the integration of the ARP program into State program activities.

In terms of partial delegation of the ARP program by geographic area, today's proposed rule remains consistent with the requirement of the 40 CFR part 70 permit program that allows partial delegation to local agencies, provided that the entire area of the State is covered by a program. It is desirable for the State officials to work closely with local officials to achieve implementation of the ARP program, particularly the Local Emergency Planning Committees (LEPCs). However, the State would retain the overall responsibility for compliance unless local officials choose, in consultation with the State, to assume specific ARP responsibilities for particular areas.

EPA is soliciting comment on whether the State should be delegated authority to develop its own petition process for listing and delisting substances from regulation under the ARP program and whether such delegation would be lawful. State programs must maintain a list of substances with thresholds which are at a minimum at least as stringent as the Federal rules in 40 CFR part 68. The statutory language in section 112(r) contains several other provisions that a State may wish to incorporate into its program. These provisions include a general duty requirement and emergency order authority.

*G. Program Review and Withdrawal of Approval*

(a) *Program Review.* In order to ensure continuing compliance with the requirements of the CAA regarding approved State rules or programs, EPA is proposing review and evaluation of a State's approved rule or program. The objective of this review process is to maintain effective State rules and programs and to assist States in identifying and correcting any inadequacies as early as possible so that the State may fulfill the regulatory goals of section 112.

Review is necessary in order to assure that a State is continuing to implement and enforce its approved rule or program, that its resources remain adequate to perform its tasks effectively without administrative backlogs, and that its legal authorities have been amended in accordance with any changes in Federal law that would require corresponding changes in State law. Periodic review of the State's implementation schedule is also necessary to ensure that recently promulgated requirements are included in the State's implementation schedule and to reflect the period of time expected for EPA's promulgation of MACT standards and other requirements.

Under the proposed review process, if EPA determines that a State is not adequately implementing or enforcing its approved rule or program according to specified criteria, EPA would notify the State of corrective action that the State must take in order to maintain the rules or program's status. If the State does not act adequately to correct the deficiencies identified by EPA, EPA would notify the State in writing the reasons that it intends to withdraw approval, and a public hearing would be held.

The purpose of the public hearing is to provide an opportunity for the public to comment on EPA's proposed determination that the State's rule or program is inadequate. As a result of public comment presented through this process, other corrective action the State must take or EPA may identify different methods of correcting inadequacies. The EPA would then allow 90 days in which the State may correct the identified deficiencies. Subsequent to a public hearing, EPA may prohibit a State from implementing and enforcing a State program in lieu of future Federal emission standards.

If the State does not correct deficiencies within the prescribed time period, EPA would formally withdraw approval of the State rule or program. This withdrawal of approval is required under section 112(l)(6).

In addition, compliance dates for sources may vary depending on a variety of factors. The regulatory schedule for promulgation of section 112 standards is statutorily mandated and has been proposed for particular source categories [section 112(e)] 57 FR 44147 (1992). Existing sources may have up to 3 years to comply with MACT or Generally Available Control Technology (GACT) standards [section 112(i)(3)(A)]; certain new or reconstructed sources may have an additional 3 years to comply after promulgation of a MACT standard [section 112(i)(2)]; existing sources that make voluntary commitments of emissions reductions may have an additional 6 years to comply [section 112(i)(5)]; existing sources that install Best Achievable Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) may have 5 years from installation to comply with MACT [section 112(i)(6)]; certain new or reconstructed sources may have 10 years after the date of construction is commenced to comply with residual risk standards [section 112(i)(7)]; sources that would have been subject to MACT standards that are not promulgated on schedule have 18 months after the scheduled promulgation date to submit permit applications to establish "equivalent emission limitations" [section 112(j)(2)]; sources subject to accidental release requirements have 3 years to comply [section 112(r)(7)(B)(i)]. The complex nature and prospective application of scheduling requirements necessitates EPA review of a State's implementation schedule.

For review, the State must demonstrate that its approved State rules or program as applied to individual sources are no less stringent than the corresponding Federal rules would be if they were applied to those sources. This demonstration is necessary to ensure that State rules or program as applied over time are at least as stringent as the Federal rules. This stringency test is required by section 112(l)(1).

In order to spell out the details of implementation of State rules or programs, EPA and the State may enter into a memorandum of understanding. Such a memorandum of understanding may provide for periodic review by EPA which may include review of compliance with the State program as approved.

Several other Clean Air Act programs, including 40 CFR part 70 permit programs, contain provisions for EPA review of a State's activities. The EPA encourages coordination among these review processes to the extent possible in order to simplify administration and decrease the burden of review and evaluation on both the Agency and the State. Coordination will save resources and will foster consistency among the different programs. The Agency solicits comment on possible coordination strategies.

The EPA may initiate a review at any time. If, at any time, EPA determines that the State's implementation or enforcement is not adequate according to the criteria in § 63.96, EPA may then initiate the withdrawal process. Nevertheless, it is EPA's intention to encourage states to correct any deficiencies and to work with the States to accomplish the objective of maintaining adequate programs rather than to withdraw approval.

(b) Withdrawal of Approval. When EPA requests information in order to review the adequacy of the implementation and enforcement of a State's approved program and evaluates that information according to the criteria specified in § 63.96(a)(3), EPA may find that the State's program is inadequate. In that case, EPA would inform the State in writing of its determination and would inform the State of the reasons for its determination. The EPA may determine that a State's program is inadequate on the basis of inadequacy of authorities that will assure compliance with standards established by EPA, of inadequacy of implementation authority or resources, on the basis that implementation or compliance dates are insufficiently expeditious, on the basis that EPA believes that the implementation and enforcement of the State rule or program is less stringent than the requirements that would result from the otherwise applicable Federal rules, or on the basis that the State's rule or program is not otherwise being administered and enforced in accordance with the criteria of section 112(l)(5).

A State so informed by EPA must take action sufficient to correct the deficiencies identified by EPA. If the State takes no corrective action or if the State's corrective action is inadequate, EPA would notify the State that EPA intends to withdraw approval of the program. The EPA would then publish a notice for a public hearing to be held no sooner than 30 days from the date of publication of the notice in order to provide an opportunity for interested members of the public to comment on EPA's proposed decision to withdraw approval of the State program. If EPA determines after the public hearing that the State is not adequately administering and enforcing its program, EPA must notify the State. If the State does not take action within 90 days that will assure compliance, EPA must withdraw approval.

These procedures are required by section 112(l)(6) of the Act that provides for written notice to the State, a public hearing, a 90 day opportunity to correct identified problems and other procedures. Periodic review, as well as discretionary review, by EPA may result in a determination that a State is not adequately implementing or enforcing its program. If this occurs, the statute requires that the State must be notified and given an opportunity to correct any deficiencies, EPA must specifically identify the deficiencies and actions to be taken by the State that will correct the deficiencies, and the State must be allowed at least 90 days to correct the deficiencies. In addition, the public must be given an opportunity to provide comments to EPA before EPA's determination has been finalized. Not until after the public hearing is held may EPA finally determine that it shall withdraw approval.

Once the required procedures have been followed, if EPA determines that the State is not adequately implementing and enforcing its program, EPA must withdraw approval. This is required by section 112(l)(6) of the Act.

*Partial Withdrawal.* Consistent with EPA's ability to approve State rules and programs in installments responsive to periodic promulgation of Federal standards and requirements, EPA may confine withdrawal actions to portions of a State program. This provides flexibility and contributes to a more workable program by allowing those portions of a State's program that are functioning adequately to proceed without disruption, while those

portions that are not being adequately implemented or enforced may be withdrawn from the approved program. When this occurs, sources subject to the requirements of the withdrawn portion of the State's program would be subject to the underlying Federal standard according to a compliance schedule published by EPA, while sources subject only to requirements of the portions of the State program not withdrawn would remain subject to the still approved State requirements.

The EPA may withdraw approval for individual State standards that correspond to Federal standards under section 112 (d), (f) or (h), or (r) as specified in § 63.95. In addition, EPA may withdraw approval of rules that correspond to Federal rules under section 112 (g), (i), or (j). EPA solicits comment on whether such programs should be treated as integrated complete programs or whether they might be treated as programs with separable elements for purposes of approval or withdrawal of approval.

*Effect of Withdrawal on 40 CFR Part 70 Permits and Other Permits.* Upon withdrawal of approval of a State rule or program, those approved State requirements are no longer the applicable requirements under 40 CFR part 70. When withdrawal of approval occurs, the State must institute proceedings to reopen any 40 CFR part 70 permits affected by the approval that has been withdrawn and revise the permit to delete the State standard or requirement as the applicable requirement and reinstate the underlying Federal standard or requirement as the applicable requirement with which the source must comply. Upon withdrawal EPA will publish a reasonable compliance schedule for the source to meet the requirements of the reinstated Federal standard. The Agency solicits comments on the likelihood of withdrawal related changes in control technology and other aspects of the effect on sources of withdrawal of portions of a State's program.

*Other Provisions.* If EPA withdraws approval for only a portion of a State program, the portions of the program for which approval has not been withdrawn would remain approved and in effect.

If EPA withdraws approval of a State rule or program or portion of a program, the State may apply for renewed approval as long as it has corrected the deficiencies for which EPA withdrew approval initially.

A State may voluntarily withdraw its rule or program as an approved program. In order to do this, the State must inform EPA of its intention and must provide public notice and opportunity to comment on the withdrawal. The withdrawal may not take effect until 180 days after the State notifies EPA, in order to provide sufficient time for EPA to assume implementation and enforcement responsibilities as necessary. If a State has an approved part 70 program, the State must assume responsibility for implementing and enforcing the otherwise applicable Federal rule once the approved State rule is withdrawn.

## IV. Administrative Requirements

### *A. Coordination With Other Clean Air Act Requirements*

Operating Permit Program. Under title V of the Clean Air Act as amended in 1990, all HAP-emitting sources will be required to obtain an operating permit. As discussed in the rule establishing the operating permit program published on July 21, 1992 (57 FR 32251), this new permit program would include in a single document all of the emission limits, monitoring, recordkeeping, and reporting requirements that pertain to a single source. The permit will contain federally enforceable conditions with which the source must comply. Once a State's permit program has been approved, each affected source within that State must apply for and obtain an operating permit. If the State does not have an approved permitting program, a submittal must be made to the Regional Office.

### *B. Executive Order 12291*

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule". The impact of this regulation is not major because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; and (2) The standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. Since the submission of a section 112(l) program is not compulsory under the Act, the costs of this rule will be borne only by those States and other air pollution control agencies which voluntarily develop and submit a section 112(l) program or take other approved actions under section 112(l). The EPA has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

### *C. Paperwork Reduction Act*

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain OMB clearance for collection of information from ten (10) or more non-Federal respondents. Under this proposed rule, each State or other air pollution control agency which elects to develop a section 112(l) program, or to take any other approved actions under section 112(l), shall be required to submit to the Administrator a program, written findings, schedules, plans, statements, and/or other documentation required for approval of the submitted program or action. The effect of this rule is to subject those States and other air pollution control agencies utilizing section 112(l) to the informational requirements of this rule in order to assure that the requirements of a 112(l) program or approved action have been met under section 112(l)(5) of the Act. These statutory requirements for approval give rise to the informational requirements of this rule.

The information collection requirements of this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (OMB No. 1643.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. EPA, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

The burden to States and other air pollution control agencies for the collection of information under this rule for the first year is estimated to be a maximum of 1901 hours per State or agency. This estimate includes time for rule interpretation, analysis and/or revision of state or local legislative authority, development of a program and schedule of implementation, as well as demonstrations of adequate resources, compliance and enforcement. Since most of these requirements are not recurring, the burden will decrease significantly in subsequent years.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*D. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA believes that there will be no impact on any small entities as a result of the promulgation of this rule since all the entities which would have the authority to accept partial or complete delegation of the Administrator under section 112(l) of the Act are States and other governmental jurisdictions whose populations exceed 50,000 persons. With no impacts expected on entities whose populations are less than 50,000, a RFA is not required by law. What follows is the certification of the Administrator that an RFA is not required with the promulgation of this rule. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*E. Review*

This regulation will be reviewed 9 years from the date of promulgation. This review will include an assessment of such factors including overlap with other programs, the existence of alternative methods, enforceability, and result of Section 112 standards review.

**List of Subjects in 40 CFR Part 63**

Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 1993.

**Jonathan Z. Cannon,**

*Acting Administrator.*

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

**Authority:** Section 112 of the Clean Air Act as amended (42 U.S.C. 7401–7671q).

2. It is proposed that part 63 be amended by adding subpart E to read as follows:

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

Sec.



## Subpart E—Approval of State Programs and Delegation of Federal Authorities

### § 63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401–7671q). This subpart establishes procedures for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 amendments to the Act). Authority to implement and enforce section 112 Federal rules as promulgated without changes need not be delegated under procedures established in this subpart. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through a section 112(l) approval.

(a) *Definitions.* The following definitions apply to this subpart. Except as specifically provided in this section, terms used in this subpart retain the meaning accorded to them in Subpart A of this part and under the applicable requirements of the Act.

*Affected source means:* (1) Any source so defined under subpart A; or (2) For purposes of § 63.95, any stationary source so defined under 40 CFR part 68.

*Applicability means* the set of all emission points within all affected sources subject to a specific section 112 rule.

*Approval* means a determination by the Administrator that a State rule or program meets the criteria of § 63.91 and the additional criteria of either § 63.92, § 63.93 or § 63.94. For accidental release prevention programs, the criteria of § 63.95 must also be met.

*Compliance and enforcement measures* means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling or accident prevention oversight.

*Level of control* means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for each hazardous air pollutant or for each substance regulated under 40 CFR part 68.

*Local agency* means a local air pollution control agency or, for the purposes of § 63.95, any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at a source regulated under section 112(r).

*Program* means a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

*Stringent or stringency* means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control and compliance and enforcement, or as otherwise determined by the Administrator.

(b) *Local agency coordination with state and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial

agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Authorities retained by the Administrator.* (1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b);

(ii) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(iv) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation;

(v) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under Title V of the Act.

**§ 63.91 Criteria common to all approval options.**

(a) *Approval process.* To obtain approval of a rule or program under this subpart, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For the accidental release prevention program, the criteria of § 63.95 must also be met.

(1) Upon receipt of a request for approval, EPA will review the request for approval and notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 180 days of receiving a complete request for approval, the Administrator will either approve or disapprove the State rule or program.

(3) If the Administrator finds that: any of the criteria of this section are not met; or any of the criteria of either § 63.92, § 63.93 or § 63.94 under which the request for approval was made are not met; or the State rule or program is not likely to satisfy the objectives of the Act in whole or in part, the Administrator will disapprove the State rule or program. If a State rule or program is disapproved, the Administrator will notify the State of any revisions or additions necessary to obtain approval. Any resubmittal by a State of a request for approval will be considered a new request under this subpart.

(4) If the Administrator finds that: all of the criteria of this section are met; and all of the criteria of either § 63.92, § 63.93 or § 63.94 are met, and unless the Administrator finds that the State rule or program is not likely to satisfy the objectives of the Act in whole or in part, the Administrator will approve the State rule or program and thereby delegate authority to implement and enforce the approved rule or program in lieu of the otherwise applicable Federal rules, emission standards or requirements. When a State rule or program is approved by the Administrator under this subpart, operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's 40 CFR part 70 permits or otherwise implemented or enforced by the State or by EPA unless and until authority to enforce the approved State rule or program is withdrawn from the State under § 63.96. The approved State rule or program shall be Federally enforceable from the date of publication of approval. Operating permits for sources subject to an approved rule or program shall contain language stating that in the event approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and that the relevant 40 CFR part 70 permits shall be revised according to the provisions of § 70.7(g) of this chapter.

(b) *Criteria for approval.* Any request for approval under this subpart shall meet all section 112(1) approval criteria specified by the otherwise applicable Federal rule, emission standard or requirements and all of the approval criteria of this section. The State shall provide the Administrator with:

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and to enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement.

(2) A copy of State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval;

(3) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval;

(4) A schedule demonstrating expeditious State implementation of the rule or program upon approval;

(5) A plan that assures expeditious compliance by all sources subject to the rule or program upon approval;

(6) A demonstration of State procedures that assure adequate enforcement of the rule or program upon approval. At a minimum the State rule or program compliance and enforcement measures must meet the following requirements.

(i) The State shall have enforcement authorities that include those described in 40 CFR 70.11.

(ii) If a State delegates authorities to a local agency, the State must retain enforcement authorities unless the local agency has authorities that include those described in 40 CFR 70.11.

(iii) The State shall have authority to request information from regulated sources regarding their compliance status.

(iv) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(c) *Revisions.* Within 90 days of any State amendment, repeal or revision of any State authorities supporting an approval under this subpart, a State must provide the Administrator with a copy of the revised authorities and either:

(1) Provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the State with approved rules, the approved program (as applicable) and each applicable section 112 rule, emission standard or requirement; or

(2) Request approval of a revised rule or program. Within 180 days and after notice and opportunity for public comment, the Administrator will approve or disapprove the revised rule or program.

(i) If the Administrator approves the revised rule or program, the revised rule or program will replace a rule or program previously approved.

(ii) If the Administrator disapproves the revised rule or program, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previous approved rule or program that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule or program, the previously approved rule or program remains Federally enforceable.

**§ 63.92 Approval of a State rule that adjusts a section 112 rule.**

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator, published in the **Federal Register** and incorporated, directly or by reference, under subpart A, without additional notice and opportunity for comment. Rules approved under § 63.95 will be incorporated under part 68 of this chapter.

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point, the Administrator will disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule; and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or *de minimis* level;

(ii) Shortening a minimum averaging time;

(iii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iv) Increasing a required control efficiency;

(v) Increasing an emission trading discount factor;

(vi) Increasing the frequency of required reporting, testing sampling or monitoring;

(vii) Adding to the amount of information required for records or reports;

(viii) Decreasing the amount of time to come into compliance;

(ix) Limiting or precluding emission trading credit for certain emission reductions;

(x) Increasing a required offset ratio;

(xi) Limiting or precluding opportunities for emissions averaging or trading;

(xii) Subjecting additional emission points or source within a source category to control requirements; and

(xiii) Any adjustments allowed in a specific section 112 rule.

**§ 63.93 Approval of a State rule that substitutes for a section 112 rule.**

Under this section a State may seek approval of a State rule which differs in form from a Federal section 112 rule for which it would substitute, such that the State rule does not qualify for approval under § 63.92

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator under this section and the approved rule will be published in the **Federal Register** and incorporated directly or by reference, under subpart A of this part. Rules approved under § 63.95 will be incorporated under part 68 of this chapter.

(3) If the Administrator finds that any of the requirements of this section of § 63.91 have not been met, the Administrator will disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with a demonstration that the State rule contains or demonstrates:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control and compliance and enforcement measures that when considered together, result in emission reductions from each affected source that are no less stringent for each affected source than those that would result from the otherwise applicable Federal rule;

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule.

(4) At a minimum, the approved State rule must include the following compliance and enforcement measures whenever they are a part of the rule for which the approved rule would substitute.

(i) The approved rule must include a method for determining compliance.

(ii) If a standard in the approved rule is not instantaneous, a maximum averaging time must be established.

(iii) The rule must establish an obligation to periodically monitor or test for compliance using the method established per § 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

(iv) The results of monitoring or testing must be reported.

**§ 63.94 Approval of a State program that substitutes for section 112 emission standards.**

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards, emission standards or requirements promulgated under sections 112(d), (f) or (h), for those affected sources permitted under 40 CFR part 70.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section the Administrator will seek public comment on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to

comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State program will be approved by the Administrator. The approved State commitment made under paragraph (b)(2) of this section and reference to all documents submitted under § 63.91(c)(2) will be published in the Federal Register and incorporated directly or by reference under subpart A.

(3) If the Administrator finds that any of the criteria of this section of § 63.91 have not been met, the Administrator will disapprove the program for approval.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A reference to all specific sources of source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under this section;

(2) A legally binding commitment adopted through State law that, after approval;

(i) For each source subject to Federal section 112 emission standards or requirements for which approval is sought, 40 CFR part 70 permits shall be issued or revised by the State in accordance with procedures established in 40 CFR part 70 and in accordance with the schedule submitted under § 63.91(c)(5) assuring expeditious compliance by all sources; and

(ii) All such issued or revised part 70 permits shall contain conditions that:

(A) Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

(B) Require levels of control for each source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements;

(C) Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements;

(D) Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement;

(E) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.

**§ 63.95 Additional approval criteria for a State rule that adjusts or substitutes for the Federal accidental release prevention program.**

(a) A State submission for approval of an ARP program must meet the criteria and be in accordance with the procedures of this section and § 63.91 and either § 63.92 or § 63.93, as appropriate.

(b) A state may apply for approval of its ARP program any time after the promulgation of this rule and after promulgation of the list of substances and risk management program rules(s) required by subsections 112(r) (3) and (7), respectively.

(c) The State ARP program application shall contain the following elements consistent with the procedures in § 63.91 and § 63.92 or § 63.93 of this subpart:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations in 40 CFR part 68 that specify substances, related thresholds and a risk management program;

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) and consistent with the requirements in § 68.12 of this chapter;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to § 68.50(i) of this chapter;

(iv) Providing technical assistance to subject sources, including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy that is consistent with 40 CFR 68.60;

(4) A description of the coordination mechanisms the State will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees.

(d) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (c) of this section.

**§ 63.96 Review and withdrawal of approval.**

(a) *Submission of information for review of approval.*

(1) The Administrator may at any time request the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate the availability of adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program that assures compliance with all section 112 rules and requirements that EPA has promulgated since approval or the immediately previous EPA review;

(v) A list of 40 CFR part 70 or other permits issued, amended, revised, or revoked since approval or the immediately previous EPA review, for sources subject to a State rule or program approved under this subpart; and

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) *Withdrawal of approval of a State program.*

(1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the

State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. Public comment should be submitted concurrently to the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate regulatory or statutory authority or resources to implement or enforce the approved rule or program, or

(ii) The State is not implementing or enforcing the approved rule or program in accordance with the criteria of this subpart; or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State program for which approval is withdrawn will no longer be Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will be the Federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the State shall reopen, under the provisions of 40 CFR 70.7(g), the 40 CFR part 70 permit of each source subject to the previously approved rules or programs in order to revise the applicable requirements for each source.

(ii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to 40 CFR part 70 permits, the applicable State rules are no longer Federally enforceable.

(iii) Upon withdrawal, the Administrator will publish a timetable for sources subject to the previously approved rule or program to come into compliance with applicable Federal requirements.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not so withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by EPA as specified in section 112(l)(7) of the Act.

(5) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new program or portion of a program is approvable according to the criteria and procedure of § 63.91 and either of § 63.92, § 63.93 or § 63.94.

(6) A State may voluntarily withdraw from an approved State rule, program or portion of a program by notifying EPA and all affected sources and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the State must reopen and revise the 40 CFR part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(g) and the Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(ii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by EPA as specified in section 112(l)(7) of the Act.

(iii) Voluntary withdrawal shall not be affective sooner than 180 days after the State notifies EPA of its intent to voluntarily withdraw.

**§ 63.97 OMB Control Number.**

The Information Collection Requirements in this Subpart have been approved by the Office of Management and Budget and assigned OMB Control No. _____.

[FR Doc. 93–11248 Filed 5–18–93; 8:45 am]

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federal register

Wednesday
May 19, 1993

Part IV

# Environmental Protection Agency

**Request for Comment on Petition To Revoke Certain Food Additive Regulations for Benomyl and Mancozeb; Office of Pesticide Programs; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-300285; FRL-4583-2]

## Request for Comment on Petition To Revoke Certain Food Additive Regulations for Benomyl and Mancozeb

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Receipt and Availability of Petition.

**SUMMARY:** This document announces the receipt of and solicits comment on two petitions proposing the revocation of certain section 409 food additive tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA). This notice sets forth the basis for the petitioners' proposal and provides opportunity for comment by the public.

**DATES:** Written comments, identified by the document control number, [OPP-300285], must be received on or before June 18, 1993.

**ADDRESSES:** By mail, requests for copies of the petition and comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Copies of the petition will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Niloufar Nazmi, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF31L1, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8028.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability:** This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1, and ASCII.

### I. Introduction

*Statutory Framework*

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 136 et seq.) authorizes the establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RACs) in section 408 of the act, and the promulgation of food additive regulations for pesticide residues in processed foods under section 409 of the act (21 U.S.C. 346(a), 348).

Under section 408 of the act, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409 of the act. Section 409 tolerances are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 tolerance is required if any pesticide residue in a processed food resulting from use on a RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on the RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 tolerance is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(C)(3)). Section 409 also contains the Delaney Clause, which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals (21 U.S.C. 348(C)(5)).

In setting both section 408 and 409 tolerances, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a raw agricultural commodity based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 tolerance is needed depends on whether there is a possibility that the processing of a raw agricultural commodity containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance.

### II. Petitions

EPA has received two petitions, from the E.I. du Pont de Nemours & Co. and the Mancozeb Task Force, regarding the revocation of certain tolerances established under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). Both petitioners claim that no food additive tolerances are necessry for these uses because residues do not concentrate during processing. The following sets forth the basis for the petitioners' requests. (A full copy of the petitions and their attachments, including the referenced studies, is available as described in the ADDRESSES section above in this document.)

*E.I. du Pont de Nemours & Co.*

E.I. du Pont de Nemours & Co. has submitted a petition requesting revocation of the tolerance established under section 409 of the FFDCA for combined residues of the fungicide benomyl (methyl-1-(butylcarbamoyl)-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in concentrated tomato products. The tolerance level for benomyl in concentrated tomato products is 50 parts per million (ppm) (40 CFR 185.350). The tolerance level under section 408 of the FFDCA for tomatoes is 4 ppm (40 CFR 180.294).

According to the petition, benomyl residues are primarily surface residues that wash away during the preparation of tomatoes for processing. The section 409 tolerance was originally set on the basis of a study where tomatoes were not washed, which is not the way tomatoes are actually handled, when being processed into concentrated tomato products. The petition cites recent studies to support the contention that total benomyl residues in concentrated tomato products are below the residues in the RAC. The petition further notes that the FDA/USDA sampling of processed tomato products in 1991 also indicates that no concentration of benomyl residues occurs during processing.

*The Mancozeb Task Force, Including E.I. du Pont de Nemours & Co., Elf Atochem North America, Inc., and Rohm and Haas Co.*

The Mancozeb Task Force has submitted a petition requesting the revocation of tolerances established under section 409 of the FFDCA for a fungicide which is a coordination product of zinc ion and maneb (manganous ethylene-bisdithiocarbamate, hereinafter referred to as mancozeb) in or on certain processed foods. The processed foods included in this petition are raisins, bran of barley, oats, rye, and wheat, and the flours of barley, oats, rye, and wheat. These tolerances are currently listed in 40 CFR 185.6300. The tolerance levels under section 408 of the FFDCA for grapes and the grains of barley, oats, rye, and wheat are currently listed in 40 CFR 180.176.

The section 409 tolerance for mancozeb on the flours of barley, oats, rye, and wheat is set below the section 408 tolerance for these grains. The lower level for flour was based on FDA's conclusion that good manufacturing practices reduce mancozeb residues in flour (32 FR 7523, May 23, 1967). It should be noted that revoking the section 409 tolerance for mancozeb on flours of barley, oats, rye, and wheat will actually allow a higher level of residues to be legally used on these commodities.

The petition requests revocation of the section 409 tolerance for mancozeb on raisins on the basis of data showing that residues in grapes do not concentrate in raisins. No concentration occurs according to the petition since mancozeb results only in surface residues that wash away during normal handling and processing.

For residues in bran and flour, the petition states that the residues do not concentrate. In support of this position, the petition notes that mancozeb is applied during the early growth stages of wheat, barely, oats, and rye, and that any residues detected in the harvested grain occur from contamination with treated straw or ground. Furthermore, the petition cites submitted data to support the claim that residues in processed grains do not exceed the residues for the grain.

## III. Conclusion

EPA has received petitions from E.I. du Pont de Nemours & Co. and the Mancozeb Task Force requesting revocation of certain food additive regulations. The petitioners claim that no section 409 tolerances are necessary for these uses because the residues do not concentrate during processing. EPA announces the receipt of and solicits comment on these two petitions. EPA especially requests comment on the request to revoke the mancozeb tolerances for various flours because the rationale stated in the petition (that residues decrease during processing) was the reason these tolerances were set at a lower level than the section 408 tolerances.

It should be noted that there is currently another petition before EPA requesting the revocation of the benomyl food additive tolerance for concentrated tomato products and the mancozeb food additive tolerances on raisins and bran of wheat. The petition asserts that these food additive tolerances should be revoked because of the Delaney anti-cancer clause in section 409. EPA's earlier order denying that petition as to these tolerances was set aside by the U.S. Court of Appeals, Ninth Circuit, in *Les v. Reilly*, 968 F. 2d 985 (9th Cir. 1992).

Pursuant to 40 CFR 177.125 and 177.30, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order in response to the petition, a person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after date of the publication of the order. 40 CFR 178.20.

**Authority:** 7 U.S.C. 346a and 348.

Dated: May 1, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93–11874; Filed 5–18–93; 8:45 am]

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federal register

Wednesday
May 19, 1993

Part V

# Department of Transportation

## Research and Special Programs Administration

## Application for a Preemption Determination as to Hazardous Materials Training and Certification Requirements Imposed by the Maryland Department of the Environment; Notice

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. PDA–12(R)]

### Application by Chemical Waste Transportation Institute and National Tank Truck Carriers, Inc. for a Preemption Determination as to Hazardous Materials Training and Certification Requirements Imposed by the Maryland Department of the Environment

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Public notice and invitation to comment.

**SUMMARY:** The Chemical Waste Transportation Institute (CWTI) and National Tank Truck Carriers, Inc. (NTTI) have applied for an administrative determination as to whether the following Maryland Department of the Environment (MDE) regulations are preempted by the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1801 *et seq.*): (1) Code of Maryland Regulations (COMAR) 26.10.01.17.A, which requires hazardous materials training and certification of non-domiciled drivers of cargo tanks transporting oil to or from points in Maryland; and (2) COMAR 26.13.01.F, which requires hazardous materials training and certification of non-domiciled drivers transporting "controlled hazardous substances" to or from points in Maryland. Drivers transporting covered hazardous materials through the State are excluded from the above training and certification requirements.

**DATES:** Comments received on or before June 23, 1993, and rebuttal comments received on or before August 29, 1993, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised in comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. (202) 366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–12(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to: (1) Mr. Stephen Hansen, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., Suite 1000, Washington, DC 20036; (2) Mr. Clifford. J. Harvison, President, National Tank Truck Carriers, Inc., 2200 Mill Rd., Alexandria, Virginia 22314; and (3) Mr. Robert Perciasepe, Secretary, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224. A certification that a copy has been sent to these persons must also be included with each comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Hansen, Harvison and Perciasepe at the addresses specified in the Federal Register.")

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Machado, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. (202) 366–4400).

### I. CWTI's and NTTI's Application for a Preemption Determination

On April 16, 1993, CWTI and NTTI filed an application seeking a determination that Maryland's hazardous materials training and certification requirements applicable to non-domiciled drivers transporting certain types of hazardous materials are preempted by the HMTA. The text of CWTI's and NTTI's application follows. (The appendices to the application are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit at the address and telephone number set forth in the ADDRESSES section above.)

**Application of the Chemical Waste Transportation Institute and the National Tank Truck Carriers, Inc. to Initiate a Proceeding to Determine that Various Training and Certification Requirements Imposed on Non-domiciled Drivers Transporting Certain Types of Hazardous Materials by the Maryland Department of the Environment are Preempted by the Hazardous Materials Transportation Act**

*Interest Of The Petitioners*

The Chemical Waste Transportation Institute (CWTI) is part of the National Solid Wastes Management Association, a not-for-profit association that represents waste services companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. National Tank Truck Carriers, Inc. (NTTC) is a trade association involved in the nationwide transportation of bulk commodities in cargo tank motor vehicles. Members of both CWTI and NTTC carry various hazardous materials to and from Maryland that are subject to the Department of the Environment's (DE) driver training and certification programs in contravention of the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMRs).

*DE Requirements For Which A Determination Is Sought*

The DE administers two driver certification programs that require evidence of training. Specifically, the Code of Maryland Regulations (COMAR) [1] requires that all drivers of cargo tanks engaged in the loading or unloading and transport of oil in Maryland obtain a certificate that such drivers have been trained to understand their responsibilities for operating cargo tanks, and in the event of a release, for reporting spills and initiating containment. Oil, including petroleum products and their by-products is defined as "oil of any kind and in any liquid form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils, and every other nonedible liquid hydrocarbon regardless of specific gravity. Oil includes aviation fuel, gasoline, kerosene, light and heavy fuel oils, diesel motor fuels, asphalt, and crude oils, but does not include liquified petroleum gases, such as liquified propane, or any edible oils." [2] The certificate is valid for 5 years.

The second certification program applies to drivers transporting to or from points in Maryland "controlled hazardous substances" (CHS). CHSs are defined as any hazardous substance that the DE identifies as a controlled hazardous substance or low-level nuclear waste. "Hazardous substance" means any substance that conveys toxic, lethal, or other injurious effects or which causes sublethal alterations to plant, animal, or aquatic life, that may be injurious to human beings, or that persists in the environment and at a minimum includes wastes identified as "hazardous" by the US Environmental Protection Agency (EPA).[3] In fact, the DE imposes the CHS training and certification requirements only on drivers transporting such EPA-identified hazardous wastes. The DE requires that all drivers to or from points in the State obtain a certificate attesting that the drivers have received training with respect to federal requirements appearing at 49 CFR parts 172 and 390–397, and 40 CFR part 263, including information specific to the hazardous waste manifest issued by the DE.[4] The certificate must be renewed at least once every three years.

To obtain the oil certificate, a driver has to preregister for a test administered by the DE at specified times and locations. To obtain the hazardous waste certificate, a driver must

[1] See attached COMAR 26.10.01.17. There is no specific statutory authorization for the oil training and certificate program.

[2] COMAR 26.10.10(B)(10).

[3] See Environment Article, Title 7, section 201 (b) and (m).

[4] See attached COMAR 26.13.01.F. and Environment Article, Title 7, section 252.

obtain a statement from his/her employer that the individual has completed an approved training program[5] and pay a fee. Both certificates resemble a driver's license in size and form and must be in the possession of the driver while engaging in covered activities within the State. Drivers transporting covered hazardous materials through the State are excluded from the training and certification programs.

*Applicability Of The Hazardous Materials Transportation Act*

While neither DE driver certification program appears to be duplicative of or conflicting with the other,[6] the DE's programs certainly are duplicative of and conflicting with federal standards. Most of the materials for which driver's are required to obtain certifications prior to transport—EPA-defined hazardous wastes and substances as well as oil, petroleum products and by-products—are regulated at the federal level under the HMTA.[7] Of the materials mentioned above, only oil-based materials with flash-points of 200 degrees or more are not required to comply with the HMRs until October 1, 1993.[8]

The guiding premise of the HMTA is that uniformity equals safety. In support of this premise, Congress reaffirmed, when the HMTA was reauthorized in 1990, that consistency in laws and regulations governing the transportation of hazardous materials is necessary to minimize the potential of risk to life, property, and the environment from hazardous materials incidents. Absent national consistency, the resulting divergent and conflicting requirements create an enormous burden for the regulated community, undermine the effectiveness of the HMTA, and potentially jeopardize the public safety.[9] In order to ensure uniformity, Congress empowered the federal Department of Transportation (DOT) to preempt non-federal requirements that conflict with or present an obstacle to the accomplishment and execution of the HMTA or the HMRs.[10]

Although the DE excluded from both training and certificate programs drivers that are passing through the state, the exclusion is not broad enough to avoid the preemptive reach of the HMTA. These exclusions may have been written in the belief that the state was satisfying some court-tested interpretation of the Commerce Clause. However, the DE's interpretation provides relief to only a portion of interstate commerce—that which is merely passing through the State—but not that commerce which enters or leaves the State—but not that commerce which enters or leaves the State as a result of a driver delivering or picking up hazardous materials subject to either training and certificate program.

The HMRs provide that "hazmat employees"—persons who perform functions involving the transportation of hazardous materials, including drivers—receive training.[11] Such training includes general awareness/familiarization training, safety training, function-specific training, and for drivers, applicable driver training. The HMRs also make clear that compliance with the commercial driver's license (CDL) requirements for tank vehicles and/or hazardous materials endorsements found at 49 CFR part 383, as well as training for such drivers required by 29 CFR 1910.120 may satisfy some hazmat employee training requirements.

Aside from federal requirements that drivers obtain a CDL with a cargo tank endorsement prior to operating such equipment and a hazardous materials endorsement prior to transporting hazardous materials which in type or quantity would require a placard, the only "certification" of a driver's compliance with the training requirements of the HMRs is a duty imposed on the driver's employer to retain a record for each driver that includes "certification that the (driver) has been trained and tested, as required. * * *"[12]

The HMRs clarify the relationship between federal and state training and certification requirements of drivers.[13] States may impose more stringent training requirements on motor vehicle drivers. However, such authority is not unlimited. States may only impose more stringent requirements if those requirements (1) do not conflict with the HMR training requirements and (2) apply only to drivers domiciled in that state. In addition, a third condition was listed in the preamble to the final rule to the effect that a state's authority to impose more stringent or additional requirements is a recognition of "traditional regulation by States of their own resident drivers * * * through drivers' licensing requirements and procedures." However, the HMRs do not authorize other state governmental agencies to impose such requirements.[14] The Maryland Motor Vehicle Administration, not the DE, issues CDLs in the State of Maryland.

*"Otherwise Authorized By Federal Law"*

Although the overriding purpose of the HMTA is to enhance safety in the transportation of hazardous materials through uniformity of requirements and standards, Congress recognized that DOT's ability to enforce uniformity through its preemptive authority over state and local requirements is limited to the extent that such non-federal requirements are "otherwise authorized by Federal law."[15] Since the enactment of the 1990 amendments to the HMTA, the courts have acted to circumscribe the reach of the "otherwise authorized by federal law" provisions. The Tenth Circuit Court of Appeals concluded that state requirements which are not specifically authorized pursuant to other federal statutes are not "otherwise authorized" simply because such federal statutes do not preempt such requirements.[16] In this instant case, two additional federal statutes deserve review.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) provides that a state shall only issue CDLs to those persons who operate or will operate commercial motor vehicles and who are domiciled in the state, and that each state must allow any person who has a valid CDL issued by any other state to operate a commercial motor vehicle in all states.[17] Thus, in terms of driver certifications, the condition that defines and limits state authority to issue driver licensing or certification requirements is not the inter- or intra-state nature of the transport or whether the transportation is to or from a state, but whether the driver is domiciled or non-domiciled.

Neither the Resource Conservation and Recovery Act (RCRA)[18] nor its implementing regulations specifically authorize any non-federal driver training or certification requirements. In fact, RCRA bars EPA from promulgating regulations applicable to transporters of hazardous waste that are inconsistent with the requirements of the HMTA and the HMRs.[19] The regulatory history implementing RCRA shows that the DOT and EPA were so concerned about the possibility that compliance with duplicative requirements could cause such inefficiency

[5] To receive approval for a training program, the program must be submitted to the DE for evaluation based on established criteria. Approved programs are issued an authorization letter. Similar letters of authorization must also be obtained to certify each program instructor.

[6] Annotated Code of Maryland, Environment Article, section 4–401(c) specifically excludes from the oil transport certification materials identified as hazardous substances under the Comprehensive Environmental Resource Compensation and Liability Act of 1980, 42 USC 9601.

[7] See 49 CFR 173.120 for definitions of flammable and combustible liquids; 49 CFR 171.8 definition of "oil" as amended by 58 FR 6870 (February 2, 1993) and "hazardous material" as amended by 57 FR 52935 (Nov. 5, 1992); 49 CFR 171.3(a) as pertaining to regulatory authority to regulate hazardous waste; Pub. L. 93–633, Section 103(2) for a definition of "hazardous material;" Pub. L. 94–580, section 1004(5) for a definition of "hazardous waste;" and Pub. L. 99–499, section 306(a), referencing section 101(14) for DOT authority to regulate RCRA-regulated hazardous wastes as hazardous materials in transportation.

[8] See 58 FR 6864 (February 2, 1993).

[9] See Pub. L. 101–615, section 2.

[10] See Pub. L. 101–615, section 13(a).

[11] See 49 CFR part 172 subpart H and 49 CFR 177.800(c) and 177.816. While DOT's preemptive authority over these requirements became operative April 1, 1993, we realize that the effective date of these requirements has been delayed until October 1, 1993. See 57 FR 20946 (May 15, 1992) and 58 FR 5850 (January 22, 1993). Any preemption decision that may be issued on this matter would ideally coincide with the DOT October 1st effective date. In no case do the petitioners seek preemption of these requirements prior to the effective date of the federal requirements.

[12] See 49 CFR 172.704(d)(5).

[13] See 49 CFR 172.701.

[14] See 57 FR 20947 (May 15, 1992).

[15] See Pub. L. 101–615, section 4(a)(4)(A) and 13(a).

[16] See *Colo. Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1581 n.10 (10th Cir. 1991).

[17] See Pub. L. 992–570, section 12009(a) (12) and (14). Additionally, it should be noted that the CMVSA specifically requires drivers operating cargo tanks and/or transporting hazardous materials in types or quantities which require a placard pursuant to 49 CFR part 172 subpart F to obtain endorsement(s) to the basic commercial driver license to verify the competence of such drivers to engage in these specialized transportation operations.

[18] See Pub. L. 94–580.

[19] See Pub. L. 94–580, section 3003(b).

or confusion that they believed the HMRs are "capable of being modified under the HMTA to address the transportation hazards of waste materials and that the RCRA states the need for such a modification."[20] When EPA delegates its authority to issue regulations to a state, the state's hazardous waste program must be equivalent to the federal program and consistent with other state authorized programs.[21]

While RCRA does not have a mechanism to prohibit states from imposing requirements on the transportation of hazardous waste which are more stringent or broader in scope than those imposed by EPA, states may not rely on RCRA to shield such requirements from review under the HMTA. The legislative history underpinning RCRA's grant of "more stringent than" authority to states shows that Congress intended to allow states to create rules "more stringent than" the federal standards only for the selection of hazardous waste disposal sites.[22] Additionally, requirements which are broader in scope than EPA's are not part of the federally-approved program.[23] EPA clarified, in a letter to CWTI concerning its grant of final authorization to California's hazardous waste program, that "State hazardous waste transportation requirements that are inconsistent with the HMTA should be dealt with through the (DOT) under the special procedures established under the HMTA for that purpose; * * * in (EPA's) view the RCRA process does not preempt DOT authority in the area of transportation."[24]

*Efforts To Seek Alternative Resolution Of This Issue*

By letter dated June 1, 1992, Secretary Perciasepe solicited comments for improving the DE in the face of increased responsibilities and diminishing resources. In response, the CWTI and the NTTC urged the DE to eliminate the above referenced driver training and certification programs for non-domiciled drivers that transport hazardous waste and oil. The CWTI/NTTC recommendation was considered by the Maryland Controlled Hazardous Substance Advisory Council (Council). On November 4, 1992, the Council submitted its recommendations to Secretary Perciasepe. The recommendations provided that:

Maryland's requirements largely duplicate the HMTA's regulations. (The Council) think(s) the federal regulations are sufficient, and note(s) that they have been recently improved and amended * * * Moreover, because of the Department's interest in eliminating duplicative regulation, we believe it is in the Department's best interests to eliminate Maryland's driver training and certification programs in favor of the federal Department of Transportation programs * * *.[25]

In response to this recommendation, the DE included in legislation considered during the 407th Session provisions to eliminate the certification requirements for drivers transporting CHSs.[26] Regrettably, this legislation was not enacted. The Maryland Legislature has adjourned until January 12, 1994. In view of these facts, the fact that the CWTI/NTTC are not aware of any effort by the DE to simultaneously eliminate the training and certification requirements for drivers transporting oil, and the fact that other states have driver training requirements, the CWTI/NTTC have forwarded this petition to RSPA for resolution.

*The DE Driver Training and Certification Requirements Are In Conflict With The "Dual Compliance" and "Obstacle" Tests*

The HMTA provides several tests to determine the consistency of state requirements to federal standards. We assert that the DE training and certification requirements for drivers transporting oil and hazardous wastes are in conflict with the "dual compliance" and "obstacle" tests.[27]

To the extent the HMRs recognize the CDL with its hazardous materials and/or cargo tank endorsements as "certification" of federal training requirements, a driver cannot comply with the requirement that "no person who operates a commercial motor vehicle * * * have more than one driver's license." The certification cards required by both DE driver training and certification programs are required to be possessed in the same manner as a CDL. Moreover, the HMRs flatly prohibited additional or more stringent training and certification requirements on non-domiciled drivers. Non-domiciled drivers transporting oil and CHSs to or from points in Maryland cannot avoid the DE requirements.

If the DE requirements are allowed to stand, other states could require state-issued certification cards prior to transporting covered hazardous materials to or from points in any such state. While enormous, the burden of such paperwork compliance would pale in comparison to the demands on company training programs to adjust to every addition or more stringent training requirement that a state may choose to impose to qualify drivers in anticipation that the driver may be in a position to transport hazardous materials to or from points in a state, particularly, if such programs required pre-approval as is the case with the DE's CHS program. These requirements become infinitely more burdensome for non-domiciled drivers who must preregister for tests at specified times and locations such as are administered by the DE for drivers transporting oil. The degree to which the DE training and certification requirements for CHS apply only to hazardous waste and apply differently from or in addition to the HMR training and recordkeeping requirements and thus create an obstacle to the accomplishment and execution of the HMTA and the HMRs, they should also be reviewed under the inconsistency restrictions of 49 CFR 171.3(c).[28]

*Conclusion*

The goals of the DE to ensure that drivers of hazardous waste and/or oil materials operate safely is laudable. We do not object to state interest in promoting safety. We do not dispute the DE's ability to determine and impose training and certification requirements on drivers of hazardous waste, oil or any other commodity when such drivers are domiciled in Maryland. What cannot be tolerated in a transportation setting, however, is unilateral state action at odds with federal prohibitions to the contrary. It is clear to us that the continued application of the DE training and certification requirements on non-domiciled drivers after October 1, 1993 is a matter ripe for preemption under the HMTA and the HMRs.

*Certification*

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to: Robert Perciasepe, Secretary, Department of the Environment, 2500 Broening Highway, Baltimore, MD 21224.

Respectfully submitted,

Stephen Hansen,

*Chairman, Chemical Waste Transportation Institute.*

Clifford J. Harvison,

*President, National Tank Truck Carriers, Inc.*

Enclosures

**Attachments**

- COMAR 26.10.01.17.
- Environment Article, Title 7, section 201(b) and (m), and Section 252.
- COMAR 26.13.01.C.
- Letter to Cynthia Hilton, NSWMA, from Deveraux Barnes, EPA, dated October 29, 1992.
- Letter to Robert Perciasepe, DE, from Scott Burns, Controlled Hazardous Substance Advisory Council.
- Maryland SB 856.
- Maryland HB 270.

## II. Background

The HMTA was enacted in 1975 to give the Department of Transportation

[20] See 43 FR 22626 (May 25, 1978).

[21] See Pub. L. 94–580, section 3006(b).

[22] See 125 Cong. Rec. S6824–5, Daily Ed., June 4, 1979. The courts have upheld this view. See *Ensco Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986) (section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Servcs.* v. *City of San Diego*, 687 F. Supp. 1436 (S.E. Cal. 1988) (Citing *Ensco*).

[23] See 40 CFR 271.1(i).

[24] See attached letter to Cynthia Hilton, CWTI, from Devereaux Barnes, EPA, dated October 29, 1992.

[25] See attached letter to Robert Perciasepe, DE, from Scott Burns, Council, dated November 4, 1992.

[26] See attached copies of HB 270 and SB 856. No legislative change is needed to eliminate the training and certification requirements for drivers transporting oil because the Maryland Environment Article authorizing the oil management and response program does not specifically require driver training or certification.

[27] See 49 CFR 107.202(b).

[28] See 49 CFR 171.39C)(1). In the preamble to this rule, RSPA stated the "Section 171.3(c) does not list all the conditions under which it might view a State or local law as 'inconsistent.'" 45 FR 35587 (May 22, 1980).

greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. A key aspect of the HMTA is that it replaced a patchwork of State and local laws. The U.S. Court of Appeals for the Tenth Circuit recognized, in *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991), that "[U]niformity was the linchpin in the design of [the HMTA]."

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe * * *" if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of a regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA] or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements]. 49 App. U.S.C. 1811(a).

Section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe * * *" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations promulgated pursuant to the HMTA. State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b), and requirements "otherwise authorized by Federal law," are excepted. Section 1804(a)(4) lists the five "covered subjects" as:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the Federal Register on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the Federal Register, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. District Court within 60 days after the determination become final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated the RSPA the authority to make determinations of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. Any person aggrieved by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for preemption determinations, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685 (Oct. 30, 1987)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

### III. Further Comments

All comments should be limited to the issue of whether Maryland's hazardous materials training and certification laws applicable to non-domiciled drivers transporting oil or controlled hazardous substances are preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance," and "obstacle" tests described in Part II above. Comments should also address the issue of whether Maryland's hazardous materials training and certification regulations are "otherwise authorized by Federal law."

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on May 13, 1993.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

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